



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 11 दिसम्बर, 2024 / 20 मार्गशीर्ष, 1946

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 6th March, 2024

No. LEP-A003/28/2021-LEP (Awards) L.C.—In exercise of the powers vested under Section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

195—राजपत्र / 2024-11-12-2024 (9445)

order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh i.e. "e-Gazette":—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/Order
1.	Ref. 153/2019	Sh. Kamal Kumar	M/s Astra Lighting Nalagarh.	22-12-2023
2.	Ref. 193/2020	Sh. Data Ram	Ashok Metha, Rubykon Mfg. Nahan.	27-12-2023
3.	Ref. 194/2020	Sh. Ram Singh	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
4.	Ref. 195/2020	Smt. Kashowati	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
5.	Ref. 199/2020	Sh. Raj Kumar	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
6.	Ref. 200/2020	Sh. Baljeet Singh	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
7.	Ref. 201/2020	Sh. Akram Khan	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
8.	Ref. 202/2020	Sh. Rishi Pal	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
9.	Ref. 203/2020	Sh. Sajid	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
10.	Ref. 204/2020	Sh. Om Pal	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
11.	Ref. 205/2020	Sh. Roop Narayan	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
12.	Ref. 210/2020	Smt. Pushpa Devi	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
13.	Ref. 211/2020	Sh. Ganesh	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
14.	Ref. 212/2020	Smt. Kanto Devi	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
15.	Ref. 213/2020	Sh. Raghuvir Singh	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
16.	Ref. 214/2020	Smt. Sundri Devi	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
17.	Ref. 215/2020	Smt. Kunti Devi	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
18.	Ref. 216/2020	Sh. Sohan Lal	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
19.	Ref. 220/2020	Sh. Vikram Singh	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
20.	Ref. 221/2020	Sh. Madan Lal	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
21.	Ref. 222/2020	Vinod Kumar	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
22.	Ref. 223/2020	Smt. Munni Devi	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023

23.	Ref. 224/2020	Sh. Ravi Kumar	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
24.	Ref. 225/2020	Sh. Manish	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
25.	Ref. 226/2020	Sh. Bhagat Ram	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
26.	Ref. 227/2020	Sh. Raj Kumar	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
27.	Ref. 228/2020	Sh. Ram Singh	Ashok Metha Rubykon Mfg. Nahan.	27-12-2023
28.	Ref. 14/2020	Sh. Balwant Kumar Sharma	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
29.	Ref. 15/2020	Sh. Nand Lal	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
30.	Ref. 16/2020	Sh. Sunil Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
31.	Ref. 17/2020	Sh. Shyam Lal	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
32.	Ref. 18/2020	Sh. Rajeev Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
33.	Ref. 20/2020	Sh. Ravi Dutt	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
34.	Ref. 21/2020	Sh. Vijay Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
35.	Ref. 26/2020	Sh. Naveen Verma	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
36.	Ref. 29/2020	Sh. Ravinder Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
37.	Ref. 30/2020	Sh. Sandeep Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
38.	Ref. 31/2020	Sh. Saurabh Kumar Sharma	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
39.	Ref. 32/2020	Sh. Naresh Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
40.	Ref. 122/2021	Sh. Ajay Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
41.	Ref. 187/2021	Sh. Anil Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
42.	Ref. 188/2021	Sh. Vinod Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
43.	Ref. 189/2021	Sh. Lucky Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
44.	Ref. 190/2021	Sh. Arun Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
45.	Ref. 191/2021	Sh. Deepak Sharma	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
46.	Ref. 192/2021	Sh. Tota Ram	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
47.	Ref. 200/2021	Sh. Hitender Singh	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023

48.	Ref. 201/2021	Sh. Ajmer Singh	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023
49.	Ref. 216/2021	Sh. Kamlesh Kumar	FM M/s Torrent Pharmaceuticals Ltd.	30-12-2023

By Order,

Sd/-
(DR. ABHISHEK JAIN, IAS),
Secretary (Lab. & Emp.).

(Reference No. 153 of 2019)

Kamal Kumar

Vs.

M/s Astra Lighting, Nalaga

22-12-2023

Present: Shri Prateek Kumar, Advocate for petitioner.
Shri Rajeev Sharma, Advocate for respondent.

With the efforts of this Tribunal, the matter has been settled between the parties.

Today, it has been stated by Ms. Gurdeep Chehal that she is ready and willing to make the payment as per document Ex. C-1 along-with Rs. 7500/- to per person as mentioned in Ex. C-1, within a period of six months and entire amount will be deposited in the Court on or before 30.06.2023. To this effect, her statement recorded separately and placed on record.

Vide separate statement Shri Kamal Kumar, Special Power of Attorney on behalf of the petitioners has stated that he is special power of attorney on behalf of all the petitioners, which is on the record as Ex. C-2 and is competent to make the statement on behalf of the petitioners. He has heard the statement of respondent and accordingly the matter be decided.

Therefore, keeping in view the aforesaid statements, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to deposit the agreed amount as mentioned in document Ex. C-1 (Rs. 29,89,180) + Rs. 7500/- per person i.e. (Rs. 2,47,500), Total amount Rs. 32,36,680/- before this Court/Tribunal on or before 30.06.2023, failing which the same shall carry interest @ 9% per annum. The SPA holder shall withdraw the deposited amount after filing appropriate application before this Court/ Tribunal.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:

22.12.2023

Sd/-

*Presiding Judge,
Labour Court, Shimla.
(Camp at Nalagarh)*

Ref. No. 193 of 2020**Data Ram*****Versus*****Ashok Mehta, Rubykon Mfg. Nahan**

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-

(KRISHAN KUMAR),
*Presiding Judge,
Labour Court, Shimla.*

Ref. No. 194 of 2020**Ram Singh**

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 195 of 2020

Kashowati

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 199 of 2020

Raj Kumar

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:

27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 200 of 2020

Baljeet Singh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 201 of 2020

Akram Khan

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 202 of 2020**Rishi Pal*****Versus*****Ashok Mehta, Rubykon Mfg. Nahan**

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 203 of 2020**Sajid*****Versus*****Ashok Mehta, Rubykon Mfg. Nahan**

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

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Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 204 of 2020

Om Pal

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 205 of 2020

Roop Narayan

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 210 of 2020

Pushpa Devi

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

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Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 211 of 2020

Ganesh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 212 of 2020

Kanto Devi***Versus*****Ashok Mehta, Rubykon Mfg. Nahan**

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 213 of 2020**Raghuvir Singh*****Versus*****Ashok Mehta, Rubykon Mfg. Nahan**

27-12-2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.

Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 214 of 2020

Sundri Devi

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 215 of 2020

Kunti Devi

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 216 of 2020

Sohan Lal

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-

(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 220 of 2020

Vikram Singh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27.12.2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 221 of 2020

Madan Lal

*Versus***Ashok Mehta, Rubykon Mfg. Nahan**

27.12.2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 222 of 2020**Vinod Kumar***Versus***Ashok Mehta, Rubykon Mfg. Nahan**

27.12.2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall from integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 223 of 2020

Munni Devi

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27.12.2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 224 of 2020

Ravi Kumar

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27.12.2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 225 of 2020

Manish

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27.12.2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-

(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 226 of 2020

Bhagat Ram

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27.12.2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 227 of 2020

Raj Kumar

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27.12.2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

Ref. No. 228 of 2020

Ram Singh

Versus

Ashok Mehta, Rubykon Mfg. Nahan

27-12-2023

Present: Sh. Vikas Nagra, Ld. Csl. for petitioner.
Sh. Ashok Mehta, respondent in person.

At this stage, Shri Ashok Mehta, respondent, has stated that the company/ firm has arrived into a compromise with the petitioner. The company is ready and willing to pay one month's salary alongwith gratuity and EPF, if any, to the petitioner as per the list Ex. C-1, within a period of one month. If the payments is not made, in that event, the petitioner is entitled for interest of @ 9% per annum. To this effect, his statement recorded separately and placed on record.

Vide separate statement Shri Vikash Nagra, Advocate for the petitioner has stated that he has heard and understood the aforesaid statement and he has no objection, if the award is made, as per list of Ex. C-1.

Therefore, keeping in view the aforesaid statements of the parties, I am satisfied that a lawful compromise has been effected between the parties. The respondent company is directed to pay one month's salary along with gratuity and EPF, if any, as per list Ex. C-1 to the petitioner within a period of one month from today, failing which the same shall carry interest @ 9% per annum.

Since, the matter between the parties stands settled, hence, the reference received from the appropriate government is disposed off in the aforesaid terms. The statements of the parties shall form integral part of the award/ order. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
27-12-2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Labour Court, Shimla.

**IN THE COURT OF KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	14 of 2020
Instituted on	:	17.02.2019
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Balwant Kumar Sharma, s/o Shri Roshan Lal, r/o Village Kanyana, PO Bhadwada, Tehsil Sarkaghat, District Mandi, HP. *..Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, HP.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K Khidtta, Advocate.
For the Respondent : Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:—

2. Heard on the pleadings of the parties, the following preliminary issues are framed:—

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? OPR.....

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.05.2010 by the respondent company and worked continuously as such till 19.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 14.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 19.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 19.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 20.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 19.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry

proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 46,112/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 14.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 14.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 19.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter on 20.11.2018 but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 27.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 14.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 19.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 27.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 03.12.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 21.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 25.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 14.02.2019 and paid him the full and final financial dues amounting to Rs. 46,112/- and gratuity amount of Rs. 60,573/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet dated 19.11.2018 Ex. R-1, letter dated 27.11.2018 Ex. R-2, letter dated 03.12.2018 Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 25.01.2019 Ex. R-6, extension of time to file reply to show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.05.2010 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 19.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Haradesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building

belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 03.12.2018 Ex. R-11, copy of proceedings, statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd show cause notice Ex. PW-1/E, reply to the show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G, enquiry report Ex. PW-1/H.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He

admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as hereunder:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s undertaking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no

reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under: —

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held

per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595 has held as under:—

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

“It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence

having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:—

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workmen is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity”.

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again**30.12.2023**

Present: Shri R.K Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 14 of 2020, in case titled Balwant Kumar Vs. Torrent Pharma, concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:—

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- ₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	15 of 2020
Instituted on	:	17.02.2019
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Nand Lal s/o Shri Ramji Das, r/o Village and PO Loharghat, Tehsil Nalagarh, District Solan, H.P. *...Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, H.P. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K Khidtta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under: —

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? *OPR.....*

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.01.2013 by the respondent company and worked continuously as such till 14.02.2018. The services of the petitioner have been terminated by the respondent w.e.f. 12.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 15.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 19.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 14.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 19.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The respondent produced forged documents in the enquiry and despite objection, the same was taken on record. The petitioner had also lodged complaint before the Police. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 27,799/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent

company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 12.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 12.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet-cum-suspension letter dated 15.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 22.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 12.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 15.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 22.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 27.11.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 21.01.2019 is based on the documents supplied

during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 25.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 12.02.2019 and paid him the full and final financial dues amounting to Rs. 27,799/- and gratuity amount of Rs. 27,772/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, letter dated 22.11.2018 Ex. R-2, letter dated 27.11.2018 Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 25.01.2019 Ex. R-6, extension to time to file reply to show cause notice Ex. R-7, reply by management Ex. R-8, reply to second show cause notice Ex. R-9, dismissal letter Ex. R-10, demand notice Ex. R-11 and reply to demand notice Ex. R-12.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.01.2013 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 15.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 28.11.2018 Ex. R-13, copy of proceedings statement of witnesses and documents Ex. RX-14, enquiry report Ex. R-15 and certificate under section 65-B Ex. R-16.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no

details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd cause notice Ex. PW-1/E, reply to show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G and enquiry report Ex. PW-1/H, demand notice PW-1/J.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as hereunder:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s undertaking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e. enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the

enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980. Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under: —

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in **Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595** has held as under:—

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

“It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:—

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the

present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasized that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30-12-2023

Present: Shri R.K Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred

to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 15 of 2020, in case tilted Nand Lal Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:—

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the "doctrine of proportionality" is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.,** if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	16 of 2020
Instituted on	:	17.02.2019
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Sunil Kumar, s/o Shri Babu Ram, r/o Village Shelli, PO Matreni, Tehsil Arki, District Solan, H.P. ...Petitioners.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, HP. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . .OPR .

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 15.01.2013 by the respondent company and worked continuously as such till 20.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 14.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 20.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter

dated 20.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 21.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 20.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 46,112/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 14.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 14.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 20.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter on 20.11.2018 but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 27.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 14.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 20.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 27.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 03.12.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 21.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 25.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 14.02.2019 and paid him the full and final financial dues amounting to Rs. 28,123/- and gratuity amount of Rs. 27,132/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti

as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet dated 20.11.2018 Ex. R-1, letter dated 27.11.2018 Ex. R-2, letter dated 03.12.2018 Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 25.01.2019 Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 15.01.2013 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 15.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 03.12.2018 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd show cause notice Ex. PW-1/E, dismissal letter Ex. PW-1/F, enquiry report Ex. PW-1/G, demand notice Ex. PW-1/H.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e. enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved

beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not required. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in *Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483* has held under para 25 and 26, as under:—

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595* has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others (1)*. That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by.—adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'tile, order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co. Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:—

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also

independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K. Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 16 of 2020, in case titled Sunil Kumar Vs. Torrent Pharma, concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl. of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by

the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurate with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:—

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	17 of 2020
Instituted on	:	17.02.2019
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Shyam Lal s/o Shri Ram r/o Village Banli Brahmna, P.O. Lohraghat, Tehsil Nalagarh,
District Solan, HP. ...Petitioner.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra,
Tehsil Baddi, District Solan, H.P. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidtta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:—

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . . OPR .

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.01.2013 by the respondent company and worked continuously as such till 14.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 12.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 14.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 14.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 14.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 14.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The respondent produced forged documents in the enquiry and despite objection, the same was taken on record. The petitioner had also lodged complaint before the Police. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the

comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 36,226/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 12.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 12.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet-cum-suspension letter dated 14.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 27.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 12.02.2019. The real facts of the case are that the petitioner

indulged in grave misconduct and accordingly he was charge sheeted on 14.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 27.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 03.12.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 25.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 30.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 12.02.2019 and paid him the full and final financial dues amounting to Rs. 36,226/- and gratuity amount of Rs. 28,800/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, letter dated 27.11.2018 Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 30.01.2019 Ex. R-6, reply to 2nd show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.01.2013 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 14.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Haradesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor

senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 03.12.2018 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd show cause notice Ex. PW-1/E, reply to show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G and enquiry report Ex. PW-1/H, demand notice Ex. PW-1/J.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered

that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e. enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not required. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:—

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we

allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595 has held as under:

"The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co. Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasized that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity”.

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khiddta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 17 of 2020, in case titled Shyam Lal Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court,

Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.,** if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : **18 of 2020**
Instituted on : **17.02.2019**
Preliminary Issue Framed on : **12.01.2022**
Decided on : **19.12.2023**

Rajeev Kumar, s/o Shri Vias Dev, r/o Village Bharoda, PO Kilod, Tehsil Salooni, District Chamba, HP. . *Petitioners.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, HP. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K. Khidta, Advocate.
For the Respondent : Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443,** as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . *OPR.*

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 09.04.2012 by the respondent company and worked continuously as such till 17.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 14.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 17.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner

requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 17.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 19.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 17.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 28,653/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 14.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 14.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner.

Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 17.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter on 17.11.2018 but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 27.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 14.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 17.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 27.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 03.12.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 23.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 29.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 14.02.2019 and paid him the full and final financial dues amounting to Rs. 28,653/- and gratuity amount of Rs. 34,747/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet dated 17.04.2018 Ex. R-1, letter dated 27.11.2018 Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 29.01.2019 Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 09.04.2012 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 17.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 03.12.2018 Ex. R-11, copy of proceedings, copies of statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to

examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd show cause notice Ex. PW-1/E, reply to show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G and enquiry report Ex. PW-1/H, demand notice Ex. PW-1/J.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s undertaking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission

knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e. enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under: —

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in **Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595** has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by.-adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the

validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether' tile, order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:—

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against

the management regarding the validity of ` the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 18 of 2020, in case tilted Rajeew Kumar Vs. Torrent Pharma, concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl. of the respondent company has conducted that this Court/Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:—

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.— Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion,

in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	20 of 2020
Instituted on	:	17.02.2019
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Ravi Dutt s/o Shri Karam Chand r/o Village Kallar, PO Bharoli-Kalan, Tehsil Jhandutta,
District Bilaspur, HP.
...Petitioner.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra,
Tehsil Baddi, District Solan, HP.
...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K. Khidtta, Advocate.
For the Respondent : Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard on the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . . OPR.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 27.05.2006 by the respondent company and worked continuously as such till 12.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 12.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 12.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 12.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 12.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 19.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The respondent produced forged documents in the enquiry and despite objection, the same was taken on record. The petitioner had also lodged complaint before the Police. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The

enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 82,432/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 12.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 12.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet-cum-suspension letter dated 12.11.2018 & 13.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 22.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-

examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 12.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 12.11.2018 & 13.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 22.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 26.11.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 25.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 30.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 12.02.2019 and paid him the full and final financial dues amounting to Rs. 39,895/- and gratuity amount of Rs. 99,278/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, letter dated 22.11.2018 Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 30.01.2019 Ex. R-6, reply to 2nd show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 27.05.2006 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 12.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the

company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 28.11.2018 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd showcause notice Ex. PW-1/E, reply to show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G and enquiry report Ex. PW-1/H.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry

and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as hereunder:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s undertaking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that

he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e. enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors., has held that the Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not required. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483 has held under para 25 and 26, as under:—

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595 has held as under:—

“The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'tile, order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

“It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have

been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:—

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasized that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity”.

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again**30.12.2023**

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 20 of 2020, in case titled Ravi Dutt Vs. Torrent Pharma, concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl. of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder: —

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the

discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon’ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon’ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the

appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	21 of 2020
Instituted on	:	17.02.2019
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Vijay Kumar, s/o Shri Vishan Dutt r/o Village Sarar, P.O. Ligga, Tehsil Salooni, District Chamba, HP. *...Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, HP. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? *...OPR.*

2. Relief

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 12.04.2006 by the respondent company and thereafter in the year 2017, the petitioner had been promoted as technician and worked continuously as such till 16.11.2018. The services of the

petitioner have been terminated by the respondent w.e.f. 14.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 16.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 16.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 17.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 59,073/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is

illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 14.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 14.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 16.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter on 16.11.2018 but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 27.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 14.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 16.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 27.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 03.12.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 25.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 30.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter

and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 14.02.2019 and paid him the full and final financial dues amounting to Rs. 50,073/- and gratuity amount of Rs. 1,09,485/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet dated 16.11.2018 Ex. R-1, letter dated 27.11.2018 Ex. R-2, letter dated 03.12.2018 Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 30.01.2019 Ex. R-6, reply to show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 12.04.2016 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 15.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 03.12.2018 Ex. R-11, copy of proceedings, statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that

the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry officer to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd show cause notice Ex. PW-1/E, reply to show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G and enquiry report Ex. PW-1/H, demand notice Ex. PW-1/J.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied

and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct

of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in **Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595** has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order

terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case."

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the

order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December., 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again.

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 21 of 2020, in case titled Vijay Kumar Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier.

The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl. of the respondent company has conducted that this Court/Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that

the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SH. KRISHAN KUMAR, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	26 of 2020
Instituted on	:	22.02.2019
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Naveen Verma, s/o Shri Sita Ram, r/o V.P.O. Dhanag, Tehsil Baijnath, District Kangra H.P. ...Petitioners.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, H.P. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : **Shri R. K. Khidtta, Advocate**
For the Respondent : **Shri Rajeev Sharma, Advocate**

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? ..OPR.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.05.2010 by the respondent company and worked continuously as such till 23.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 14.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 23.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 23.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 24.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 23.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Haradesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented

the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardeh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 28,653/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 14.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 14.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 23.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter on 23.11.2018 but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter

dated 26.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 14.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 16.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 26.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 28.11.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 21.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 25.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 14.02.2019 and paid him the full and final financial dues amounting to Rs. 38,427/- and gratuity amount of Rs. 55,101/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet dated 23.11.2018 Ex. R-1, reply by worker Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 25.01.2019 Ex. R-6, reply to 2nd show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.05.2010 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 23.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 29.11.2018 Ex. R-11, copy of proceedings, statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the

enquiry officer Mark PX-2, 2nd show cause notice Ex. PW-1/E, reply to the show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G, enquiry report Ex. PW-1/H, demand notice PW-1/J.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses

of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The

petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in *Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483* has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595* has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workmen is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December., 2023

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 26 of 2020, in case tilted Naveen Verma Vs. Torrent Pharma, concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl. of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of

awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon’ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon’ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	29 of 2020
Instituted on	:	22.02.2020
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Ravinder Kumar, s/o Shri Ram Gopal r/o Vill. & P.O. Kattal, Tehsil Nalagarh, District Solan, H.P. ...Petitioner.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, HP. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidta, Advocate
For the Respondent	:	Shri Rajeev Sharma, Advocate

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . . *OPR*.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.02.2013 by the respondent company and worked continuously as such till 14.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 12.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 14.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 15.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 14.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 15.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The respondent produced forged documents in the enquiry and despite objection, the same was taken on record. The petitioner had also lodged complaint before the Police. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the

petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 27,853/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 12.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 12.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet-cum-suspension letter dated 15.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 22.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 12.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 15.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 22.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 27.11.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 25.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 30.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 12.02.2019 and paid him the full and final financial dues amounting to Rs. 27,853/- and gratuity amount of Rs. 28,343/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, letter dated 22.11.2018 Ex. R-2, letter dated 27.11.2018 Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 30.01.2019 Ex. R-6, reply to show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.02.2013 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 15.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Haradesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the

principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 28.11.2018 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd cause notice Ex. PW-1/E, reply to show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G and enquiry report Ex. PW-1/H, demand notice Ex. PW-1/J.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered

that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as hereunder:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s undertaking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no

reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e. enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the

issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh* (1972) 1 SCC 595 has held as under:

"The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman' was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the

domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasized that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity”.

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 29 of 2020, in case tilted Ravinder Kumar Vs. Torrent Pharma, concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl. of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon’ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon’ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum**

compensation to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	30 of 2020
Instituted on	:	22.02.2020
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Sandeep Kumar s/o Shri Satpal r/o Village Bar Badowa, PO Doli, Tehsil Nalagarh, District Solan, HP. ...Petitioners.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, HP. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidta, Advocate
For the Respondent	:	Shri Rajeev Sharma, Advocate

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard on the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? ...OPR.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 15.09.2012 by the respondent company and worked continuously as such till 20.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 14.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 20.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 20.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 21.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 20.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 28,167/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being

performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 14.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 14.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 20.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter on 20.11.2018 but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 27.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 14.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 20.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 27.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 03.12.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the

respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 25.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 30.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 14.02.2019 and paid him the full and final financial dues amounting to Rs. 28,167/- and gratuity amount of Rs. 28,312/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet dated 20.11.2018 Ex. R-1, letter dated 27.11.2018 Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 30.01.2019 Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 15.09.2012 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 20.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 03.12.2018 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the

procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd show cause notice Ex. PW-1/E, reply to show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G and enquiry report Ex. PW-1/H.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e. enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595* has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

“It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasized that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity”.

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner
Shri Rajiv Sharma, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without

complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 30 of 2020, in case titled Sandeep Kumar Vs. Torrent Pharma, concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

- **11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.-** Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be,

shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,

**IN THE COURT OF KRISHAN KUMAR, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : **31 of 2020**
Instituted on : **22.02.2020**
Preliminary Issue Framed on : **12.01.2022**
Decided on : **19.12.2023**

Saurabh Kumar Sharma, s/o Shri Ram Dayal Sharma r/o Village Jharabal, P.O. Dhakriana,
Tehsil Kasauli, District Solan, H.P. *...Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra,
Tehsil Baddi, District Solan, H.P. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K Khidtta, Advocate
For the Respondent : Shri Rajeev Sharma, Advocate

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard on the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? *...OPR.*

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 15.01.2013 by the respondent company and worked continuously as such till 23.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 14.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the

petitioner and other workers and started harassing the workers on one pretext to another. On 23.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 23.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 24.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 45,541/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 14.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 14.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation

amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 23.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter on 23.11.2018 but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 26.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 14.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 23.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 26.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 28.11.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 21.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 25.01.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 14.02.2019 and paid him the full and final financial dues amounting to Rs. 45,541/- and gratuity amount of Rs. 28,637/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet dated 23.11.2018 Ex. R-1, letter dated 28.11.2018 Ex. R-2, appointment of enquiry officer Ex. R-3, representing officer letter Ex. R-4, second show cause notice dated 25.01.2019 Ex. R-5, reply to show cause notice Ex. R-7, dismissal letter Ex. R-7, demand notice Ex. R-8 and reply to demand notice Ex. R-9.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 15.01.2013 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 23.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 29.11.2018 Ex. R-10, copy of proceedings, statement of witnesses and documents Ex. RX-11, enquiry report Ex. R-12 and certificate under section 65-B Ex. R-13.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply

properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd cause notice Ex. PW-1/E, reply to show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G, demand notice Ex. PW-1/H.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or

want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in **Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595** has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by

it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a

proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidta, Advocate for petitioner
Shri Rajiv Sharma, Advocate for respondent

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 31 of 2020, in case tilted Saurabh Kumar Sharma Vs. Torrent Pharma, concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the

dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl. of the respondent company has conducted that this Court/Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon’ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon’ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the

facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc.,** if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	32 of 2020
Instituted on	:	22.02.2020
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Naresh Kumar s/o Shri Dharam Chand, r/o Village and P.O. Karaaur, Tehsil Nadaun, District Hamirpur, HP. ...Petitioner.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, HP. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K. Khidta, Advocate.
For the Respondent : Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? ..OPR.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as operator w.e.f. 01.04.2006 by the respondent company and worked continuously as such till 14.11.2018. The services of the petitioner have been terminated by the respondent w.e.f. 12.02.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. On 14.11.2018, the petitioner was called by the official of the respondent company in the office room where he was asked to sign one letter which was transfer of the petitioner and the petitioner requested the respondent management to go through the contents of the letter but he was not allowed, hence the petitioner refused to receive the letter. The respondent pressurized the petitioner to put his signature on the letter and immediately thereafter a charge sheet-cum-suspension letter dated 16.11.2018 was served upon the petitioner. The petitioner was transferred from Baddi to Ahmedabad (Gujrat) w.e.f. 14.11.2018 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 16.11.2018 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an

independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardeh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The respondent produced forged documents in the enquiry and despite objection, the same was taken on record. The petitioner had also lodged complaint before the Police. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 82,432/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 12.02.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 12.02.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly

charge sheet-cum-suspension letter dated 14.11.2018 was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter but the petitioner failed to file the reply within given time. Thereafter, the respondent again written a letter dated 22.11.2018 to the petitioner but the petitioner had not filed any reply to the charge sheet, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 12.02.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 14.11.2018 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet but the petitioner failed to file any reply to charge sheet. Thereafter, the respondent again written a letter on 22.11.2018 by giving one more chance to file reply to the charge sheet but again the petitioner failed to file the reply to the charge sheet and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 27.11.2018 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management twice, as the petitioner requested for further cross-examination of the management witnesses. The enquiry report dated 23.01.2019 is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 29.1.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 12.02.2019 and paid him the full and final financial dues amounting to Rs. 82,432/- and gratuity amount of Rs. 1,35,113/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, letter dated 27.11.2018 Ex. R-2, setting of enquiry and appointment of enquiry officer Ex. R-3, representing officer letter Ex. R-4, second show cause notice dated 30.01.2019 Ex. R-5, reply to second show

cause notice Ex. R-6, dismissal letter Ex. R-7, demand notice Ex. R-8 and reply to demand notice Ex. R-9.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.04.2006 and worked continuously till 2018. He further admitted that the transfer order is dated 12.11.2018 and charge sheet-cum-suspension letter dated is 14.11.2018. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 28.11.2018 Ex. R-10, copy of proceedings statement of witnesses and documents Ex. RX-11, enquiry report Ex. R-12 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence letter dated 12.10.2018 Mark PX, transfer letter

Ex. PW-1/B, chargesheet Ex. PW-1/C, appointment of enquiry officer Ex. PW-1/D, list of witnesses filed by Shri Hardesh Sharma, MR dated 03.07.2015 Mark PX-1, letter to change the enquiry officer Mark PX-2, 2nd show cause notice Ex. PW-1/E, reply to show cause notice Ex. PW-1/F, dismissal letter Ex. PW-1/G and enquiry report Ex. PW-1/H.

12. In cross-examination, he admitted that he was ordered to be transferred to Ahmdabad. He denied that he had not received the transfer letter intentionally and he was chargesheeted. He denied that he had not filed the reply to the chargesheet within prescribed period. He further denied that he was given extra time to file the reply to chargesheet. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He further admitted that the procedure was explained to him before conducted the enquiry and the cross-examination of management witnesses was conducted by him. He also examined defence witnesses in the enquiry and also produced documents in his favour. His statement was recorded. His signatures were obtained on the enquiry proceedings and statements of witnesses. He admitted that copy of proceedings and witnesses were supplied to him on the same day. He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. Volunteered that the company had offered him compensation of Rs. 25 lacs for leaving the union. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but refused to accept the transfer order. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not accepted the transfer orders passed by the management company. It is admitted that the petitioner was

chargesheeted and the enquiry officer was appointed. During the course of the enquiry proceedings, the enquiry officer recorded the statements of witnesses of respondent company and the witnesses of the petitioner being defence evidence. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not accepted the transfer order passed by the management and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and cross-examined the respondent witnesses and also led his evidence in defence. From the perusal of the enquiry proceedings, it is clear that the petitioner was also afforded another opportunity to re-cross-examine the management witnesses. This a part the petitioner was also examined himself as a witness in defence. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered post but admitted that he has not filed the reply. He further admitted in his cross-examination that he participated in the enquiry proceedings and cross-examined the witnesses of the management. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in **Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595** has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is

open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasized that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 30 of 2020, in case titled Sandeep Kumar Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against

the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation,

would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	122 of 2021
Instituted on	:	13.08.2021
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Ajay Kumar s/o Shri Kartar Singh, r/o VPO Pairwin, Tehsil Barsar, District Hamirpur, H. P.

...Petitioners.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud, Makhnu Majra,
Tehsil Baddi, District Solan, H.P. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K. Khidtta, Advocate
For the Respondent : Shri Rajeev Sharma, Advocate

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . . OPR.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.06.2010 by the respondent company. The petitioner was promoted as Technician w.e.f. 13.07.2011 and worked continuously as such till 08.07.2019. The company vide deputation letter dated 05.07.2019, asked the company to report at their plant Gujrat. The petitioner filed the detailed reply and requested to cancel the same as the same was issued with intention to victimize the petitioner. The prayer of the petitioner was not accepted and a chargesheet was served upon the petitioner, which was duly replied by him. After receiving the reply filed by the petitioner, he was suspended w.e.f. 03.09.2019. The services of the petitioner have been terminated by the respondent w.e.f. 28.01.2020, without assigning any reasons and without complying with the mandatory provisions of the Act. The petitioner was not allowed to enter in the company w.e.f. 08.07.2019 till 03.09.2019 and salary for this period was not paid to him. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. After receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer, who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer started the enquiry in his personal room/office under the surveillance of CCTV camera and had not explained anything about the procedure to be adopted during the enquiry proceedings to the petitioner before starting the enquiry and right from very beginning, the enquiry officer started misbehaving with the petitioner. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to

him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was illegally proceeded against ex-parte by the enquiry officer and ex-parte enquiry was conducted against the petitioner, which is not fair and proper. The second show cause notice was issued against the petitioner, which was duly replied by him. After receiving the reply to second show cause notice, the services of the petitioner have been terminated. The respondent company has sent Rs. 46191/- in the account of the petitioner, which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. Sending the petitioner on deputation from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The deputation order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamount to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 28.01.2020 by the respondent company may be set-aside and the petitioner may be reinstated on the same post with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filling reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter and filed the reply, which was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense but the petitioner choose to remain away from the enquiry proceedings during the course of enquiry, hence, he was proceeded against ex-parte. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 20.01.2020. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 31.07.2019 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet, which was filed by him within time. After receiving the reply to chargesheet, the respondent management considered the same but was not found satisfactory and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 26.08.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management but during the proceedings, the petitioner chosen to remain away from the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry report is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the deputation letter and as such the respondent management left with no other choice but to dismiss the petitioner and paid him the full and final financial dues amounting to Rs. 52428/- and gratuity amount of Rs. 82356/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1, who tendered into evidence his affidavit EX.RW-1/A, wherein he has reiterated almost all the averments as made in the reply. He also tendered his evidence charge sheet Ex. R-1, reply to chargesheet Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.06.2010 and worked continuously till 2019. The petitioner was sent on deputation to Gujrat. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was sent to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner

was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice Ex. R-11, copy of proceedings, statement of witnesses and documents Ex. R-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He admitted that the enquiry report is ex-parte. He denied that the petitioner was wrongly proceeded against ex-parte. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence deputation letter Ex. PW-1/B, reply to deputation Ex. PW-1/C, chargesheet Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, suspension letter Ex. PW-1/F, dismissal letter Ex. PW-1/G, appointment of enquiry officer Ex. PW-1/H, letter dated 19.10.2019 Ex. PW-1/J, enquiry report Ex. PW-1/K, 2nd show cause notice Ex. PW-1/L, reply to show cause notice Ex. PW-1/M, demand notice Ex. PW-1/N, reply to demand notice Ex. PW-1/P, letter dated 20.09.2019 Ex. PW-1/Q, formation of union Mark PX-1, documents Mark PX-2 and letter given to Labour Officer Mark PX-3.

12. In cross-examination, he admitted that he was given deputation letter and he had not joined at the deputation place. He further admitted that he was chargeseeted for not joining at deputation place. He admitted that after issuing the chargesheet, enquiry officer was appointed, who issued notice to him. He further admitted that he filed the reply to the chargesheet. He admitted to have joined the enquiry proceedings. He also admitted that procedure was explained to him. He admitted that he appended his signatures on enquiry proceedings. He admitted that he had not appeared before the enquiry officer after attending the four dates. He further admitted that the enquiry officer issued notices to him after he left attending the enquiry. He denied that the ex-parte enquiry was conducted against him by following the principles of natural justice. He admitted that

he was subjected to domestic enquiry for not joining at deputation place. He denied that he was asked before the Labour Officer to join at deputation place.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was sent on deputation but refused to report at deputation place. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not reported at deputation place passed. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. It is also an admitted fact that the petitioner duly participated in the enquiry proceedings but after some time he left the enquiry proceedings, hence, the enquiry officer had concluded the enquiry ex-parte and had come to the conclusion that the petitioner had not reported for duties at deputation place and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner and it was the petitioner who had chosen not to participate in the enquiry despite having attended the same in four dates. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him which was duly replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings on four dates and thereafter he had not participated in the enquiry proceedings. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management and it was not petitioner himself who has not participated in the enquiry despite having been attended the same in four dates.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595 has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

“It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should

have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again**30.12.2023**

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K. Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 122 of 2021, in case titled Ajay Kumar Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to report for his duties at deputational place, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had sent the petitioner on deputation but the petitioner had not joined his duties at place where he was sent on deputation. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	187 of 2021
Instituted on	:	16.09.2021
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Anil Kumar, s/o Shri Ompal Singh, r/o Village Khali Achoon, P.O. Chhachheti, Tehsil Poanta Sahib, District Sirmaur, H.P. *...Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, H.P. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K Khidta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? *...OPR.*

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.06.2006 by the respondent company and worked continuously as such till 06.03.2019. The services of the petitioner have been terminated by the respondent w.e.f. 07.11.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. The respondent company issued show cause notice dated 20.02.2019 and asked the petitioner to explain about the allegations levelled against him, which was replied by the petitioner by denying the allegations. It was made clear by the petitioner that incident has taken place with the workers and the same was reported to the Police against the actual culprits and the FIR was lodged by the workers, hence, the entire allegations levelled by the company vide show cause notice are totally false. The petitioner has received the charge sheet-cum-suspension letter dated 05.03.2019 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer, who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. The petitioner gave in writing against the enquiry officer keeping in view of his association with the respondent company but the request of the petitioner was not accepted. The petitioner was illegally proceeded against ex-parte by the enquiry officer. The ex-parte enquiry conducted by the petitioner was not fair and proper as the principles of natural justice were not followed by the enquiry officer. During the enquiry proceedings, the petitioner demanded the copy of certified standing orders, which was not provided to him. The petitioner was also not allowed to bring his defence assistant in the enquiry proceedings. Thereafter, on the basis of ex-parte enquiry, 2nd show cause notice was issued to him and the petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 40082/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The dismissal of the services of the petitioner on the basis of false allegations levelled in the chargesheet, was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent

company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 07.11.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 07.11.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filling reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 05.03.2019 was issued to the petitioner as per certified standing orders of the company. The petitioner filed the reply, which was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to attend the enquiry proceedings but despite various notices, the petitioner intentionally failed to appear before the enquiry, hence, he was proceeded against ex-parte. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 07.11.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 05.03.2019 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet, which was filed by him within time but the same was not found satisfactory and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 18.03.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The petitioner was also approzed that he can put his defence by himself or through any co-worker of the factory. The enquiry officer after his appointment, issued notice dated 16.04.2019 to the petitioner, which was received by him but failed to take part in the enquiry and thereafter again notice was issued to the petitioner upon which he participated in the enquiry proceedings and the enquiry officer explained him the procedure to be adopted during the enquiry proceedings. After 20.05.2019, the petitioner chosen to remain away from the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer conducted the enquiry in lawful manner. The enquiry report dated 05.09.2019, is based on the documents supplied during the course of enquiry proceedings. After going through

all evidence and documents, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 10.10.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the chargesheet and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 07.11.2019 and paid him the full and final financial dues amounting to Rs. 40082/- and gratuity amount of Rs. 100058/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, reply to chargesheet Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.06.2006 and worked continuously till 2019. He further admitted that the charge sheet-cum-show cause notice was issued to the petitioner. He denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was sent to the respondent. He further denied that the petitioner has not made false statement against the respondent company. He admitted that the petitioner got registered FIR No. 41/19 against the outsiders. He denied that the respondent company had sent muscle man to assault the petitioner and workers. He admitted that a criminal case is pending before the Criminal Court at Nalagarh. He denied that the false allegations were levelled against the petitioner. He further denied that no statement was made by the petitioner in the social media. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 16.09.2019 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. R-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the

management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry officer to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence show cause notice Ex. PW-1/B, reply to show cause notice Ex. PW-1/C, chargesheet with suspension Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, appointment of enquiry officer Ex. PW-1/F, enquiry report Ex. PW-1/G, letter written to Labour Commissioner Ex. PW-1/H, 2nd show cause notice Ex. PW-1/J, reply to 2nd show cause notice Ex. PW-1/K, dismissal letter Ex. PW-1/L, demand notice Ex. PW-1/M, letter written to management Ex. PW-1/N, formation of union Mark PX-2, document dated 03.07.2015 Mark PX-1, copy of FIR Mark PX-3.

12. In cross-examination, he admitted that he was given show cause notice which was replied by him. He admitted that he is active in social media. He further admitted that he uploaded a video on the social media i.e facebook regarding the quarrel against Sr. Officers of the factory. He further admitted that the quarrel had taken place on 14.02.2019. He admitted that he was chargesheeted by the respondent and he filed the reply to the chargesheet. He admitted that the respondent management ordered enquiry in chargesheet and the enquiry officer had intimated to appear before him. He further admitted that he participated in the enquiry proceedings and procedure was explained to him. He admitted to have appended his signatures on the enquiry proceedings. He deposed that he attended the enquiry 5-6 times and thereafter he had not attended the enquiry proceedings. He admitted that the enquiry was conducted by the enquiry officer ex-parte. He also admitted that Hindi translation of standing orders was supplied to him. He admitted that enquiry report with 2nd show cause notice was supplied to him. He denied that he intentionally uploaded the video in order to tarnish the image of the company.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s

under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that the quarrel has taken place outside the premises of the factory and the matter was reported to the Police but the petitioner has given the bites flash on the facebook and tried to tarnish the image of the management that they have sent the persons to cause the injury to them as the management was inimical to them due to formation of the union. It is also an admitted fact that the reply was called from the petitioner to the show cause notice, wherein the petitioner has denied all the allegations. There is also no denial to the fact that the petitioner was chargesheeted and enquiry was ordered to be conducted to look into the matter by appointing the enquiry officer. During the course of the enquiry proceedings, the petitioner has participated in the enquiry for 5/6 times and thereafter he had chosen not to participate the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer had concluded the ex-parte enquiry on the basis of record available before him. As per the enquiry report, the charges levelled against the petitioner stood duly proved. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings but after some time he failed to participate in the enquiry proceedings, hence, he was proceeded against ex-parte. Even, the petitioner himself had submitted that they were collected in front of the gate along-with union flags and then some outsiders quarreled with them and he has also sustained injuries. The outsiders were saying that they were sent by the company to beaten them and a video was uploaded. Even, during the enquiry, CD was also played in which it was showing that the petitioner is making the allegations against the company that the senior officials of the company has called the local "gunda's" to give beating to the workers but there was no proof with the petitioner that the outsiders were hired by the company. The enquiry officer had concluded that a video was uploaded on the facebook by the petitioner in order to tarnish the image of the company. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him, which was replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings for 5/6 time and thereafter he had not participated in the enquiry. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The perusal of enquiry report would reveal that sufficient opportunities were afforded to the petitioner to put forth his defence but the petitioner despite having been served and attended the enquiry proceedings, failed to participate in the enquiry. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the

enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not required. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court

would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595* has held as under:

"The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as **Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652** has held as under:

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workmen is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity”.

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-

(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K. Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 187 of 2021, in case titled Anil Kumar Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he had uploaded the video on the social media and tried to tarnish the image of the respondent company, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and,

in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had dismissed the petitioner from service on the ground that he had uploaded the video on social media i.e facebook and also tried to tarnish the image of the respondent company. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the

appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 188 of 2021
Instituted on : 16.09.2021
Preliminary Issue Framed on : 12.0.12.2022
Decided on : 19.12.2023

Vinod Kumar, s/o Shri Rassila Ram, r/o Village Jhanjhada, P.O. Nachier, Tehsil Palampur, District Kangra, H.P. ...*Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra, Tehsil Baddi, District Solan, HP. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K. Khidtta, Advocate.
For the Respondent : Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? ...*OPR.*

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 02.04.2012 by the respondent company and worked continuously as such till 28.02.2019. The services of the petitioner have been terminated by the respondent w.e.f. 11.11.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. The respondent company issued show cause notice dated 20.02.2019 and asked the petitioner to explain about the allegations levelled against him, which was replied by the petitioner by denying the allegations. It was made clear by the petitioner that incident has taken place with the workers and the same was reported to the Police against the actual culprits and the FIR was lodged by the workers, hence, the entire allegations levelled by the company vide show cause notice are totally false. The petitioner has received the charge sheet-cum-suspension letter dated 27.02.2019 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer, who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. The petitioner gave in writing against the enquiry officer keeping in view of his association with the respondent company but the request of the petitioner was not accepted. The petitioner was illegally proceeded against ex-parte by the enquiry officer. The ex-parte enquiry conducted by the petitioner was not fair and proper as the principles of natural justice were not followed by the enquiry officer. During the enquiry proceedings, the petitioner demanded the copy of certified standing orders, which was not provided to him. The petitioner was also not allowed to bring his defence assistant in the enquiry proceedings. Thereafter, on the basis of ex-parte enquiry, 2nd show cause notice was issued to him and the petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 33082/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The dismissal of the services of the petitioner on the basis of false allegations levelled in the chargesheet, was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent

company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 11.11.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 11.11.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filling reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 27.02.2019 was issued to the petitioner as per certified standing orders of the company. The petitioner filed the reply, which was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to attend the enquiry proceedings but despite various notices, the petitioner intentionally failed to appear before the enquiry, hence, he was proceeded against ex-parte. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 11.11.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 27.02.2019 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet, which was filed by him within time but the same was not found satisfactory and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 16.03.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The petitioner was also approzed that he can put his defence by himself or through any co-worker of the factory. The enquiry officer after his appointment, issued notice dated 18.04.2019 to the petitioner, which was received by him but failed to take part in the enquiry and thereafter again notice was issued to the petitioner upon which he participated in the enquiry proceedings and the enquiry officer explained him the procedure to be adopted during the enquiry proceedings. After 20.05.2019, the petitioner chosen to remain away from the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer conducted the enquiry in lawful manner. The enquiry report dated 05.09.2019, is based on the documents supplied during the course of enquiry proceedings. After going through

all evidence and documents, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 10.10.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the chargesheet and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 11.11.2019 and paid him the full and final financial dues amounting to Rs. 33082/- and gratuity amount of Rs. 40680/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, reply to chargesheet Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 02.04.2012 and worked continuously till 2019. He further admitted that the charge sheet-cum-show cause notice was issued to the petitioner. He denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was sent to the respondent. He further denied that the petitioner has not made false statement against the respondent company. He admitted that the petitioner got registered FIR No. 41/19 against the outsiders. He denied that the respondent company had sent muscle man to assault the petitioner and workers. He admitted that a criminal case is pending before the Criminal Court at Nalagarh. He denied that the false allegations were levelled against the petitioner. He further denied that no statement was made by the petitioner in the social media. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 16.09.2019 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. R-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the

management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry officer to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence show cause notice Ex. PW-1/B, reply to show cause notice Ex. PW-1/C, chargesheet with suspension Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, appointment of enquiry officer Ex. PW-1/F, enquiry report Ex. PW-1/G, letter written to Labour Commissioner Ex. PW-1/H, 2nd show cause notice Ex. PW-1/J, reply to 2nd show cause notice Ex. PW-1/K, dismissal letter Ex. PW-1/L, demand notice Ex. PW-1/M, letter written to management Ex. PW-1/N, formation of union Mark PX-2, document dated 03.07.2015 Mark PX-1, copy of FIR Mark PX-3, letter to labour officer Mark PX-4.

12. In cross-examination, he admitted that he was given show cause notice which was replied by him. He admitted that he is active in social media. He further admitted that he uploaded a video on the social media i.e facebook regarding the quarrel against Sr. Officers of the factory. He further admitted that the quarrel had taken place on 14.02.2019. He admitted that he was chargesheeted by the respondent and he filed the reply to the chargesheet. He admitted that the respondent management ordered enquiry in chargesheet and the enquiry officer had intimated to appear before him. He further admitted that he participated in the enquiry proceedings and procedure was explained to him. He admitted to have appended his signatures on the enquiry proceedings. He deposed that he attended the enquiry 5-6 times and thereafter he had not attended the enquiry proceedings. He admitted that the enquiry was conducted by the enquiry officer ex-parte. He also admitted that Hindi translation of standing orders was supplied to him. He admitted that enquiry report with 2nd show cause notice was supplied to him. He denied that he intentionally uploaded the video in order to tarnish the image of the company.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s

under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that the quarrel has taken place outside the premises of the factory and the matter was reported to the Police but the petitioner has given the bites flash on the facebook and tried to tarnish the image of the management that they have sent the persons to cause the injury to them as the management was inimical to them due to formation of the union. It is also an admitted fact that the reply was called from the petitioner to the show cause notice, wherein the petitioner has denied all the allegations. There is also no denial to the fact that the petitioner was chargesheeted and enquiry was ordered to be conducted to look into the matter by appointing the enquiry officer. During the course of the enquiry proceedings, the petitioner has participated in the enquiry for 5/6 times and thereafter he had chosen not to participate the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer had concluded the ex-parte enquiry on the basis of record available before him. As per the enquiry report, the charges levelled against the petitioner stood duly proved. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings but after some time he failed to participate in the enquiry proceedings, hence, he was proceeded against ex-parte. Even, the petitioner himself had submitted that they were collected in front of the gate along-with union flags and then some outsiders quarreled with them and he has also sustained injuries. The outsiders were saying that they were sent by the company to beaten them and a video was uploaded. Even, during the enquiry, CD was also played in which it was showing that the petitioner is making the allegations against the company that the senior officials of the company has called the local "gunda's" to give beating to the workers but there was no proof with the petitioner that the outsiders were hired by the company. The enquiry officer had concluded that a video was uploaded on the facebook by the petitioner in order to tarnish the image of the company. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him, which was replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings for 5/6 time and thereafter he had not participated in the enquiry. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The perusal of enquiry report would reveal that sufficient opportunities were afforded to the petitioner to put forth his defence but the petitioner despite having been served and attended the enquiry proceedings, failed to participate in the enquiry. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the

enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not required. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court

would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh* (1972) 1 SCC 595 has held as under:

"The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman' was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as **Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652** has held as under:

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workmen is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity”.

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K. Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 188 of 2021, in case titled Vinod Kumar Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he had uploaded the video on the social media and tried to tarnish the image of the respondent company, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order

of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon’ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon’ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had dismissed the petitioner from service on the ground that he had uploaded the video on social media i.e facebook and also tried to tarnish the image of the respondent company. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : **189 of 2021**
Instituted on : **16.09.2021**
Preliminary Issue Framed on : **12.01.2022**
Decided on : **19.12.2023**

Lucky Kumar, s/o Shri Raj Kumar, r/o Village Batlari, P.O. Kandli Dholralla,, Tehsil
Badoh, District Kangra, H.P. *...Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra,
Tehsil Baddi, District Solan, H.P. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K. Khidtta, Advocate.
For the Respondent : Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? *...OPR.*

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.02.2011 by the respondent company and worked continuously as such till 28.02.2019. The services of the petitioner have been terminated by the respondent w.e.f. 07.11.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018

to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. The respondent company issued show cause notice dated 20.02.2019 and asked the petitioner to explain about the allegations levelled against him, which was replied by the petitioner by denying the allegations. It was made clear by the petitioner that incident has taken place with the workers and the same was reported to the Police against the actual culprits and the FIR was lodged by the workers, hence, the entire allegations levelled by the company vide show cause notice are totally false. The petitioner has received the charge sheet-cum-suspension letter dated 27.02.2019 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer, who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. The petitioner gave in writing against the enquiry officer keeping in view of his association with the respondent company but the request of the petitioner was not accepted. The petitioner was illegally proceeded against ex-parte by the enquiry officer. The ex-parte enquiry conducted by the petitioner was not fair and proper as the principles of natural justice were not followed by the enquiry officer. During the enquiry proceedings, the petitioner demanded the copy of certified standing orders, which was not provided to him. The petitioner was also not allowed to bring his defence assistant in the enquiry proceedings. Thereafter, on the basis of ex-parte enquiry, 2nd show cause notice was issued to him and the petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 43446/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The dismissal of the services of the petitioner on the basis of false allegations levelled in the chargesheet, was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly

be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 07.11.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 07.11.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filling reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 27.02.2019 was issued to the petitioner as per certified standing orders of the company. The petitioner filed the reply, which was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to attend the enquiry proceedings but despite various notices, the petitioner intentionally failed to appear before the enquiry, hence, he was proceeded against ex-parte. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 07.11.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 27.02.2019 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet, which was filed by him within time but the same was not found satisfactory and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 16.03.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The petitioner was also approzed that he can put his defence by himself or through any co-worker of the factory. The enquiry officer after his appointment, issued notice dated 16.04.2019 to the petitioner, which was received by him but failed to take part in the enquiry and thereafter again notice was issued to the petitioner upon which he participated in the enquiry proceedings and the enquiry officer explained him the procedure to be adopted during the enquiry proceedings. After 20.05.2019, the petitioner chosen to remain away from the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer conducted the enquiry in lawful manner. The enquiry report dated 05.09.2019, is based on the documents supplied during the course of enquiry proceedings. After going through all evidence and documents, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 10.10.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the chargesheet and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 07.11.2019 and paid him the full and final financial dues

amounting to Rs. 43446/- and gratuity amount of Rs. 51186/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, reply to chargesheet Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.06.2006 and worked continuously till 2019. He further admitted that the charge sheet-cum-show cause notice was issued to the petitioner. He denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was sent to the respondent. He further denied that the petitioner has not made false statement against the respondent company. He admitted that the petitioner got registered FIR No. 41/19 against the outsiders. He denied that the respondent company had sent muscle man to assault the petitioner and workers. He admitted that a criminal case is pending before the Criminal Court at Nalagarh. He denied that the false allegations were levelled against the petitioner. He further denied that no statement was made by the petitioner in the social media. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 16.09.2019 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. R-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that

the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry officer to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence show cause notice Ex. PW-1/B, reply to show cause notice Ex. PW-1/C, chargesheet with suspension Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, appointment of enquiry officer Ex. PW-1/F, enquiry report Ex. PW-1/G, letter written to Labour Commissioner Ex. PW-1/H, 2nd show cause notice Ex. PW-1/J, reply to 2nd show cause notice Ex. PW-1/K, dismissal letter Ex. PW-1/L, demand notice Ex. PW-1/M, letter written to management Ex. PW/N, formation of union Mark PX-2, document dated 03.07.2015 Mark PX-1, copy of FIR Mark PX-3 and letter to labour officer Mark PX-4.

12. In cross-examination, he admitted that he was given show cause notice which was replied by him. He admitted that he is active in social media. He further admitted that he uploaded a video on the social media i.e facebook regarding the quarrel against Sr. Officers of the factory. He further admitted that the quarrel had taken place on 14.02.2019. He admitted that he was chargesheeted by the respondent and he filed the reply to the chargesheet. He admitted that the respondent management ordered enquiry in chargesheet and the enquiry officer had intimated to appear before him. He further admitted that he participated in the enquiry proceedings and procedure was explained to him. He admitted to have appended his signatures on the enquiry proceedings. He deposed that he attended the enquiry 5-6 times and thereafter he had not attended the enquiry proceedings. He admitted that the enquiry was conducted by the enquiry officer ex-parte. He also admitted that Hindi translation of standing orders was supplied to him. He admitted that enquiry report with 2nd show cause notice was supplied to him. He denied that he intentionally uploaded the video in order to tarnish the image of the company.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or

want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that the quarrel has taken place outside the premises of the factory and the matter was reported to the Police but the petitioner has given the bites flash on the facebook and tried to tarnish the image of the management that they have sent the persons to cause the injury to them as the management was inimical to them due to formation of the union. It is also an admitted fact that the reply was called from the petitioner to the show cause notice, wherein the petitioner has denied all the allegations. There is also no denial to the fact that the petitioner was chargesheeted and enquiry was ordered to be conducted to look into the matter by appointing the enquiry officer. During the course of the enquiry proceedings, the petitioner has participated in the enquiry for 5/6 times and thereafter he had chosen not to participate the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer had concluded the ex-parte enquiry on the basis of record available before him. As per the enquiry report, the charges levelled against the petitioner stood duly proved. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings but after some time he failed to participate in the enquiry proceedings, hence, he was proceeded against ex-parte. Even, the petitioner himself had submitted that they were collected in front of the gate along-with union flags and then some outsiders quarreled with them and he has also sustained injuries. The outsiders were saying that they were sent by the company to beaten them and a video was uploaded. Even, during the enquiry, CD was also played in which it was showing that the petitioner is making the allegations against the company that the senior officials of the company has called the local "gunda's" to give beating to the workers but there was no proof with the petitioner that the outsiders were hired by the company. The enquiry officer had concluded that a video was uploaded on the facebook by the petitioner in order to tarnish the image of the company. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him, which was replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings for 5/6 time and thereafter he had not participated in the enquiry. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The perusal of enquiry report would reveal that sufficient opportunities were afforded to the petitioner to put forth his defence but the petitioner despite having been served and attended the enquiry proceedings, failed to participate in the enquiry. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the

enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980. Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not required. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in **Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595** has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

“It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service

of the workman concerned and whether the workmen is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December., 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K. Khiddta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 189 of 2021, in case titled Luckey Kumar Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he had uploaded the video on the social media and tried to tarnish the image of the respondent company, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court,

Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had dismissed the petitioner from service on the ground that he had uploaded the video on social media i.e facebook and also tried to tarnish the image of the respondent company. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd-
(KRISHAN KUMAR),
Presiding Judge,

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	190 of 2020
Instituted on	:	16.09.2021
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Arun Kumar s/o Shri Kuldeep Chand r/o Village Chanol, PO Taleli, Tehsil Sunder Nagar,
District Mandi, HP. *...Petitioners.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra,
Tehsil Baddi, District Solan, HP. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K Khidtta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? *...OPR.*

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 11.09.2006 by the respondent company and worked continuously as such till 15.03.2019. The services of the petitioner have been terminated by the respondent w.e.f. 07.11.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. The

petitioner was issued show cause notice on 23.11.2018, which was duly replied by him. The petitioner was transferred from Baddi to Derabassi (Punjab) w.e.f. 14.03.2019 without any reason and with intention to terminate his service illegally. The petitioner received the charge sheet dated 15.03.2019 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was illegally proceeded against ex-parte in the enquiry proceedings. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The transfer of the petitioner from Baddi to Derabassi (Punjab) was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The transfer order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 07.11.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 07.11.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filling reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not

referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter but the reply filed by the petitioner was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 07.11.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 15.03.2019 as per the certified standing orders of the company. The reply filed by the petitioner to the chargesheet was not found satisfactory, hence, the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 16.04.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding but later on he has chosen to remain away from the enquiry proceedings, hence, he was rightly proceeded against ex-parte by the enquiry officer. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 07.11.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the transfer letter and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 07.11.2019 and paid him the full and final financial dues amounting to Rs. 61489/- and gratuity amount of Rs. 99173/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet dated 20.11.2018 Ex. R-1, letter dated 27.11.2018 Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice dated 30.01.2019 Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 11.09.2006 and worked continuously till 2018. He further admitted that the transfer order is dated 14.11.2018 and charge sheet-cum-suspension letter dated is 15.03.2019. Volunteered that the petitioner did not accept the transfer letter. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 03.12.2018 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. RX-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence show cause notice Ex. PW-1/B, chargesheet-cum-suspension letter Ex. PW-1/C, reply to chargesheet along-with medical Ex. PW-1/D, appointment of enquiry officer Ex. PW-1/E, enquiry report Ex. PW-1/F, dismissal letter Ex. PW-1/G, demand

notice Ex. PW-1/H, letter to management Ex. PW-1/J, document dated 3.7.2015 Mark PX-1, formation of union dated 12.10.2018 Mark PX-2 and letter to labour commissioner Mark PX-3.

12. In cross-examination, he admitted that he was ordered to be transferred to Dera Bassi. He admitted that he was chargesheeted for not joining the transferred place. He admitted that the company appointed the enquiry officer, who issued notice to him for appearance in the enquiry. He further admitted that he participated in the enquiry. He admitted that he had not joined the transferred place. He denied that the procedure was explained to him before conducted the enquiry. He admitted that he attended the enquiry proceedings 4-5 times. He admitted his signatures on the enquiry proceedings. He admitted that he was proceeded against ex-parte He admitted that he was subjected to domestic enquiry for not joining at transferred place. Volunteered that the transfer was ordered only when he joined the union. He denied that there is no registered union in the Factory, registered with the HP Government. He denied that he has not placed any documents regarding the union. He denied that he was asked before the Labour Officer to join at transferred place. He denied that the enquiry was conducted as per certified standing orders and in accordance with the principles of natural justice. The second show cause notice was issued to him and reply of the same was filed by him.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was transferred but had not joined at the transferred place. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not joined his duties at transferred place. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. It is also and admitted fact that during the course of the enquiry proceedings, the petitioner failed to participate in the enquiry proceedings despite having been served. It is admitted by the petitioner that he had attended the proceedings 5-6 times and thereafter he had not participated in the enquiry. It is admitted that ex-parte enquiry was conducted against the petitioner. After the completion of proceedings, the enquiry officer had concluded from the evidence available on record that the petitioner has not reported for his duties at the transferred place and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry

report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings and thereafter failed to participate in the enquiry proceedings. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him through registered which was duly replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not required. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses but the petitioner himself had chosen not to participate in the enquiry. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in *Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483* has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595* has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others (1)*. That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman' was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the

domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasized that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K. Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 29 of 2020, in case titled Ravinder Kumar Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to accept the transfer order, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved

during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued transfer order of the petitioner but the petitioner refused to accept the same and had not joined his duties at transferred place. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	191 of 2021
Instituted on	:	16.09.2021
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Deepak Sharma, s/o Shri Baldev, r/o Village Manjhyari, P.O. Beuinkhari, Tehsil Nalagarh,
District Solan, H.P. ...Petitioner.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra,
Tehsil Baddi, District Solan, HP. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidtta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper**

Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . . . OPR.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.09.2012 by the respondent company and worked continuously as such till 28.02.2019. The services of the petitioner have been terminated by the respondent w.e.f. 11.11.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. The respondent company issued show cause notice dated 20.02.2019 and asked the petitioner to explain about the allegations levelled against him, which was replied by the petitioner by denying the allegations. It was made clear by the petitioner that incident has taken place with the workers and the same was reported to the Police against the actual culprits and the FIR was lodged by the workers, hence, the entire allegations levelled by the company vide show cause notice are totally false. The petitioner has received the charge sheet-cum-suspension letter dated 27.02.2019 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer, who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. The petitioner gave in writing against the enquiry officer keeping in view of his association with the respondent company but the request of the petitioner was not accepted. The petitioner was illegally proceeded against ex-parte by the enquiry officer. The ex-parte enquiry conducted by the petitioner was not fair and proper as the principles of natural justice were not followed by the enquiry officer. During the enquiry proceedings, the petitioner demanded the copy of certified standing orders, which was not provided to him. The petitioner was also not allowed to bring his defence assistant in the enquiry proceedings. Thereafter, on the basis of ex-parte enquiry, 2nd show cause notice was issued to him and the petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 48892/- in the account of the petitioner which was deposited without his consent. The enquiry

officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The dismissal of the services of the petitioner on the basis of false allegations levelled in the chargesheet, was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 11.11.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 11.11.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filling reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 27.02.2019 was issued to the petitioner as per certified standing orders of the company. The petitioner filed the reply, which was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to attend the enquiry proceedings but despite various notices, the petitioner intentionally failed to appear before the enquiry, hence, he was proceeded against ex-parte. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 11.11.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 27.02.2019 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet, which was filed by him within time but the same was not found satisfactory and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the

misconduct of the petitioner. The petitioner was duly informed vide letter dated 22.03.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The petitioner was also apprized that he can put his defence by himself or through any co-worker of the factory. The enquiry officer after his appointment, issued notice dated 16.04.2019 to the petitioner, which was received by him but failed to take part in the enquiry and thereafter again notice was issued to the petitioner upon which he participated in the enquiry proceedings and the enquiry officer explained him the procedure to be adopted during the enquiry proceedings. After 20.05.2019, 19.06.2019, 17.07.2019, 05.08.2019 the petitioner chosen to remain away from the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer conducted the enquiry in lawful manner. The enquiry report dated 05.09.2019, is based on the documents supplied during the course of enquiry proceedings. After going through all evidence and documents, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 10.10.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the chargesheet and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 11.11.2019 and paid him the full and final financial dues amounting to Rs. 48892/- and gratuity amount of Rs. 36726/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, letter dated 27.11.2018 Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.09.2012 and worked continuously till 2019. He further admitted that the charge sheet-cum-show cause notice was issued to the petitioner. He denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was sent to the respondent. He further denied that the petitioner has not made false statement against the respondent company. He admitted that the petitioner got registered **FIR No. 41/19** against the outsiders. He denied that the respondent company had sent muscle man to assault the petitioner and workers. He admitted that a criminal case is pending before the Criminal Court at Nalagarh. He denied that the false allegations were levelled against the petitioner. He further denied that no statement was made by the petitioner in the social media. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 16.09.2019 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. R-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence show cause notice Ex. PW-1/B, reply to show cause notice Ex. PW-1/C, chargesheet with suspension Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, appointment of enquiry officer Ex. PW-1/F, enquiry report Ex. PW-1/G, letter written to Labour Commissioner Ex. PW-1/H, 2nd show cause notice Ex. PW-1/J, reply to 2nd show cause notice Ex. PW-1/K, dismissal letter Ex. PW-1/L, demand notice Ex. PW-1/M, letter written to management Ex. PW/N, formation of union Mark PX-2, document dated 03.07.2015 Mark PX-1, copy of FIR Mark PX-3, letter to labour officer Mark PX-4.

12. In cross-examination, he admitted that he was given show cause notice which was replied by him. He admitted that he is active in social media. He further admitted that he uploaded a video on the social media i.e facebook regarding the quarrel against Sr. Officers of the factory. He further admitted that the quarrel had taken place on 14.02.2019. He admitted that he was chargesheeted by the respondent and he filed the reply to the chargesheet. He admitted that the respondent management ordered enquiry in chargesheet and the enquiry officer had intimated to appear before him. He further admitted that he participated in the enquiry proceedings and procedure was explained to him. He admitted to have appended his signatures on the enquiry proceedings. He deposed that he attended the enquiry 5-6 times and thereafter he had not attended the enquiry proceedings. He admitted that the enquiry was conducted by the enquiry officer ex-parte. He also admitted that Hindi translation of standing orders was supplied to him. He admitted that enquiry report with 2nd show cause notice was supplied to him. He denied that he intentionally uploaded the video in order to tarnish the image of the company.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that the quarrel has taken place outside the premises of the factory and the matter was reported to the Police but the petitioner has given the bites flash on the facebook and tried to tarnish the image of the management that they have sent the persons to cause the injury to them as the management was inimical to them due to formation of the union. It is also an admitted fact that the reply was called from the petitioner to the show cause notice, wherein the petitioner has denied all the allegations. There is also no denial to the fact that the petitioner was chargesheeted and enquiry was ordered to be conducted to look into the matter by appointing the enquiry officer. During the course of the enquiry proceedings, the petitioner has participated in the enquiry for 5/6 times and thereafter he had chosen not to participate the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer had concluded the ex-parte enquiry on the basis of record available before him. As per the enquiry report, the charges levelled against the petitioner stood duly proved. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings but after some time he failed to participate in the enquiry proceedings, hence, he was proceeded against ex-parte. Even, the petitioner himself had submitted that they were collected in front of the gate along-with union flags and then some outsiders quarreled with them and he has also sustained injuries. The outsiders were saying that they were sent by the company to beaten them and a video was uploaded. Even, during the enquiry, CD was also played in which it was showing that the petitioner is making the allegations against the company that the senior officials of the company has called the local “gunda’s” to give beating to the workers but there was no proof with the petitioner that the outsiders were hired by the company. The enquiry officer had concluded that a video was uploaded on the facebook by the petitioner in order to tarnish the image of the company. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him, which was replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings for 5/6 time and thereafter he had not participated in the enquiry. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The perusal of enquiry report would reveal that sufficient opportunities were afforded to the petitioner to put forth his

defence but the petitioner despite having been served and attended the enquiry proceedings, failed to participate in the enquiry. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980. Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh* (1972) 1 SCC 595 has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

“It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity”.

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 191 of 2021, in case titled Deepak Sharma Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he had uploaded the video on the social media and tried to tarnish the image of the respondent company, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.— Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon’ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon’ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had dismissed the petitioner from service on the ground that he had uploaded the video on social media i.e facebook and also tried to tarnish the image of the respondent company. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum**

compensation to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	192 of 2021
Instituted on	:	16.09.2021
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Tota Ram, s/o Shri Devi Ram, r/o Village Dushra Khabu, P.O. Thina Galu, Tehsil Sadar,
District Mandi, H.P. *...Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud-Makhnu Majra,
Tehsil Baddi, District Solan, H.P. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? .OPR.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 08.09.2008 by the respondent company and worked continuously as such till 28.02.2019. The services of the petitioner have been terminated by the respondent w.e.f. 11.11.2019, without assigning any reasons and without complying with the mandatory provisions of the Act. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. The respondent company issued show cause notice dated 20.02.2019 and asked the petitioner to explain about the allegations levelled against him, which was replied by the petitioner by denying the allegations. It was made clear by the petitioner that incident has taken place with the workers and the same was reported to the Police against the actual culprits and the FIR was lodged by the workers, hence, the entire allegations levelled by the company vide show cause notice are totally false. The petitioner has received the charge sheet-cum-suspension letter dated 27.02.2019 and filed the detailed reply to the charge sheet whereby he has denied the entire allegations levelled against him and thereafter after receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer, who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer started the enquiry in his personal room and had not explained anything about the procedure to be adopted during the enquiry procedure to the petitioner. The enquiry officer right from very beginning started misbehaving with the petitioner and favored the respondent company. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. The petitioner gave in writing against the enquiry officer keeping in view of his association with the respondent company but the request of the petitioner was not accepted. The petitioner was illegally proceeded against ex-parte by the enquiry officer. The ex-parte enquiry conducted by the petitioner was not fair and proper as the principles of natural justice were not followed by the enquiry officer. During the enquiry proceedings, the petitioner demanded the copy of certified standing orders, which was not provided to him. The petitioner was also not allowed to bring his defence assistant in the enquiry proceedings. Thereafter, on the basis of ex-parte enquiry, 2nd show cause notice was issued to him and the petitioner was asked to file the comments to second show cause notice and after receiving the reply the services of the petitioner had been terminated. The respondent company has sent Rs. 33082/- in the account of the petitioner which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the

petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. The dismissal of the services of the petitioner on the basis of false allegations levelled in the chargesheet, was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamounts to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 11.11.2019 by the respondent company may be set-aside and the petitioner may be reinstated on the same post w.e.f. 11.11.2019 with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filling reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet dated 27.02.2019 was issued to the petitioner as per certified standing orders of the company. The petitioner filed the reply, which was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to attend the enquiry proceedings but despite various notices, the petitioner intentionally failed to appear before the enquiry, hence, he was proceeded against ex-parte. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 11.11.2019. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted on 27.02.2019 as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet, which was filed by him within time but the same was not found satisfactory and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 16.03.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The petitioner was also appraised that he can put his defence by himself or through any co-worker of the factory. The

enquiry officer after his appointment, issued notice dated 16.4.2019 to the petitioner, which was received by him but failed to take part in the enquiry and thereafter again notice was issued to the petitioner upon which he participated in the enquiry proceedings and the enquiry officer explained him the procedure to be adopted during the enquiry proceedings. After 20.05.2019, the petitioner chosen to remain away from the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer conducted the enquiry in lawful manner. The enquiry report dated 05.09.2019, is based on the documents supplied during the course of enquiry proceedings. After going through all evidence and documents, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner vide letter dated 10.10.2019. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the chargesheet and as such the respondent management left with no other choice but to dismiss the petitioner vide dismissal letter dated 11.11.2019 and paid him the full and final financial dues amounting to Rs. 44600/- and gratuity amount of Rs. 74079/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1 who tendered into evidence his affidavit EX.RW-1/A, wherein he has supported the entire contents as made in the reply. He also tendered his evidence charge sheet Ex. R-1, reply to chargesheet Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 08.09.2008 and worked continuously till 2019. He further admitted that the charge sheet-cum-show cause notice was issued to the petitioner. He denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was send to the respondent. He further denied that the petitioner has not made false statement against the respondent company. He admitted that the petitioner got registered FIR No. 41/19 against the outsiders. He denied that the respondent company had sent muscle man to assault the petitioner and workers. He admitted that a criminal case is pending before the Criminal Court at Nalagarh. He denied that the false allegations were levelled against the petitioner. He further denied that no statement was made by the petitioner in the social media. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice dated 16.09.2019 Ex. R-11, copy of proceedings statement of witnesses and documents Ex. R-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He denied that the letter dated 06.12.2018 was not signed by the workers. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry office to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. . He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence show cause notice Ex. PW-1/B, reply to show cause notice Ex. PW-1/C, chargesheet with suspension Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, appointment of enquiry officer Ex. PW-1/F, enquiry report Ex. PW-1/G, letter written to Labour Commissioner Ex. PW-1/H, 2nd show cause notice Ex. PW-1/J, reply to 2nd show cause notice Ex. PW-1/K, dismissal letter Ex. PW-1/L, demand notice Ex. PW-1/M, letter written to management Ex. PW-1/N, formation of union Mark PX-2, document dated 03.07.2015 Mark PX-1, copy of FIR Mark PX-3 and letter to labour officer Mark PX-4.

12. In cross-examination, he admitted that he was given show cause notice which was replied by him. He admitted that he is active in social media. He further admitted that he uploaded a video on the social media i.e facebook regarding the quarrel against Sr. Officers of the factory. He further admitted that the quarrel had taken place on 14.02.2019. He admitted that he was chargesheeted by the respondent and he filed the reply to the chargesheet. He admitted that the respondent management ordered enquiry in chargesheet and the enquiry officer had intimated to appear before him. He further admitted that he participated in the enquiry proceedings and procedure was explained to him. He admitted to have appended his signatures on the enquiry proceedings. He deposed that he attended the enquiry 5-6 times and thereafter he had not attended the enquiry proceedings. He admitted that the enquiry was conducted by the enquiry officer ex-parte. He also admitted that Hindi translation of standing orders was supplied to him. He admitted that enquiry report with 2nd show cause notice was supplied to him. He denied that he intentionally uploaded the video in order to tarnish the image of the company.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that the quarrel has taken place outside the premises of the factory and the matter was reported to the Police but the petitioner has given the bites flash on the facebook and tried to tarnish the image of the management tht they have sent the persons to cause the injury to them as the management was inimical to them due to formation of the union. It is also an admitted fact that the reply was called from the petitioner to the show cause notice, wherein the petitioner has denied all the allegations. There is also no denial to the fact that the petitioner was chargesheeted and enquiry was ordered to be conducted to look into the matter by appointing the enquiry officer. During the course of the enquiry proceedings, the petitioner has participated in the enquiry for 5/6 times and thereafter he had chosen not to participate the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry officer had concluded the ex-parte enquiry on the basis of record available before him. As per the enquiry report, the charges levelled against the petitioner stood duly proved. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner. He has duly participated in the enquiry proceedings but after some time he failed to participate in the enquiry proceedings, hence, he was proceeded against ex-parte. Even, the petitioner himself had submitted that they were collected in front of the gate along-with union flags and then some outsiders quarreled with them and he has also sustained injuries. The outsiders were saying that they were sent by the company to beaten them and a video was uploaded. Even, during the enquiry, CD was also played in which it was showing that the petitioner is making the allegations against the company that the senior officials of the company has called the local “gunda’s” to give beating to the workers but there was no proof with the petitioner that the outsiders were hired by the company. The enquiry officer had concluded that a video was uploaded on the facebook by the petitioner in order to tarnish the image of the company. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him, which was replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings for 5/6 time and thereafter he had not participated in the enquiry. He also admitted that he was dismissed from the service and full and final payment was also deposted in his account at the time of the dismissal. The perusal of enquiry report would reveal that sufficient opportunities were afforded to the petitioner to put forth his defence but the petitioner despite having been served and attended the enquiry proceedings, failed to participate in the enquiry. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not required. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally

unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595 has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

“It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the

management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

“It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity”.

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,

Re-called/Taken up again**30.12.2023**

Present: Shri R.K. Khidta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 192 of 2021, in case titled **Tota Ram Vs. Torrent Pharma.**, concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that by uploading the video against the respondent management, he had tried to tarnish the image of the company, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally uploaded the video on the social media in order to tarnish the image of the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had issued chargesheet to the petitioner and after receiving the reply from the petitioner, the management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	200 of 2021
Instituted on	:	09.11.2021
Preliminary Issue Framed on	:	27.10.2021
Decided on	:	19.12.2023

Hitender Singh s/o Shri Tulsi Ram r/o Village Tonru, P.O. Danda Anj, Tehsil Paonta Sahib,
District Sirmour, H.P. *...Petitioner.*

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud, Makhnu Majra,
Tehsil Baddi, District Solan, HP. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443,** as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? *...OPR.*

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 15.03.2010 by the respondent company. and worked continuously as such till 03.09.2019. The company vide deputation letter dated 02.07.2019, asked the company to report at their plant Madhya Pradesh. The petitioner filed the detailed reply and requested to cancel the same as the same was issued with intention to victimize the petitioner. The prayer of the petitioner was not accepted and a chargesheet was served upon the petitioner, which was duly replied by him. After receiving the reply filed by the petitioner, he was suspended w.e.f. 03.09.2019. The services of the petitioner have been terminated by the respondent w.e.f. 28.01.2020, without assigning any reasons and without complying with the mandatory provisions of the Act. The petitioner was not allowed to enter in the company w.e.f. 15.07.2019 till 03.09.2019 and salary for this period was not paid to him. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. After receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer, who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer started the enquiry in his personal room/office under the surveillance of CCTV camera and had not explained anything about the procedure to be adopted during the enquiry proceedings to the petitioner before starting the enquiry and right from very beginning, the enquiry officer started misbehaving with the petitioner. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was illegally proceeded against ex-parte by the enquiry officer and ex-parte enquiry was conducted against the petitioner, which is not fair and proper. The second show cause notice was issued against the petitioner, which was duly replied by him. After receiving the reply to second show cause notice, the services of the petitioner have been terminated. The respondent company has sent Rs. 46191/- in the account of the petitioner, which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. Sending the petitioner on deputation from Baddi to Madhya Pradesh was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The deputation order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this

reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamount to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 28.01.2020 by the respondent company may be set-aside and the petitioner may be reinstated on the same post with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter and filed the reply, which was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense but the petitioner choose to remain away from the enquiry proceedings during the course of enquiry, hence, he was proceeded against ex-parte. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 28.01.2020. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet, which was filed by him within time. After receiving the reply to chargesheet, the respondent management considered the same but was not found satisfactory and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 26.08.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management but during the proceedings, the petitioner chosen to remain away from the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry report is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management

came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the deputation letter and as such the respondent management left with no other choice but to dismiss the petitioner and paid him the full and final financial dues amounting to Rs. 34318/- and gratuity amount of Rs. 33370/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1, who tendered into evidence his affidavit EX.RW-1/A, wherein he has reiterated almost all the averments as made in the reply. He also tendered his evidence charge sheet Ex. R-1, reply to chargesheet Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.02.2013 and worked continuously till 2019. The petitioner was sent on deputation to Madhya Pradesh. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was sent to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice Ex. R-11, copy of proceedings, statement of witnesses and documents Ex. R-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He admitted

that the enquiry report is ex-parte. He denied that the petitioner was wrongly proceeded against ex-parte. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry officer to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence deputation letter Ex. PW-1/B, reply to deputation Ex. PW-1/C, chargesheet Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, suspension letter Ex. PW-1/F, dismissal letter Ex. PW-1/G, appointment of enquiry officer Ex. PW-1/H, letter dated 19.10.2019 Ex. PW-1/J, enquiry report Ex. PW-1/K, 2nd show cause notice Ex. PW-1/L, reply to show cause notice Ex. PW-1/M, demand notice Ex. PW-1/N, reply to demand notice Ex. PW-1/P, letter dated 20.09.2019 Ex. PW-1/Q, formation of union Mark PX-1, documents Mark PX-2 and letter given to Labour Officer Mark PX-3.

12. In cross-examination, he admitted that he was given deputation letter and he had not joined at the deputation place. He further admitted that he was chargesheeted for not joining at deputation place. He admitted that after issuing the chargesheet, enquiry officer was appointed, who issued notice to him. He further admitted that he filed the reply to the chargesheet. He admitted to have joined the enquiry proceedings. He also admitted that procedure was explained to him. He admitted that he appended his signatures on enquiry proceedings. He admitted that he had not appeared before the enquiry officer after attending the four dates. He further admitted that the enquiry officer issued notices to him after he left attending the enquiry. He denied that the ex-parte enquiry was conducted against him by following the principles of natural justice. He admitted that he was subjected to domestic enquiry for not joining at deputation place. He denied that he was asked before the Labour Officer to join at deputation place.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or

want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was sent on deputation but refused to report at deputation place. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not reported at deputation place passed. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. It is also an admitted fact that the petitioner duly participated in the enquiry proceedings but after some time he left the enquiry proceedings, hence, the enquiry officer had concluded the enquiry ex-parte and had come to the conclusion that the petitioner had not reported for duties at deputation place and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner and it was the petitioner who had chosen not to participate in the enquiry despite having attended the same in four dates. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him which was duly replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings on four dates and thereafter he had not participated in the enquiry proceedings. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management and it was not petitioner himself who has not participated in the enquiry despite having been attended the same in four dates.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in **Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595** has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was

further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order

impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be uphold or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 200 of 2021, in case titled Hitender Singh Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The

main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to report for his duties at deputational place, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had sent the petitioner on deputation but the petitioner had not joined his duties at place where he was sent on deputation. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	201 of 2021
Instituted on	:	27.10.2021
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Ajmer Singh s/o Shri Dharav Ram, r/o VPO Katholi, Tehsil Jawali, District Kangra, H.P.

...Petitioner.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud, Makhnu Majra,
Tehsil Baddi, District Solan, H.P. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri R.K Khidtta, Advocate.
For the Respondent : Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? . .OPR.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 01.02.2013 by the respondent company. and worked continuously as such till 03.09.2019. The company vide deputation letter dated 15.07.2019, asked the company to report at their plant Gujrat. The petitioner filed the detailed reply and requested to cancel the same as the same was issued with intention to victimize the petitioner. The prayer of the petitioner was not accepted and a chargesheet was served upon the petitioner, which was duly replied by him. After receiving the reply filed by the petitioner, he was suspended w.e.f. 03.09.2019. The services of the petitioner have been terminated by the respondent w.e.f. 28.01.2020, without assigning any reasons and without complying with the mandatory provisions of the Act. The petitioner was not allowed to enter in the company w.e.f. 16.07.2019 till 03.09.2019 and salary for this period was not paid to him. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. After receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer, who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer started the enquiry in his personal room/office under the surveillance of CCTV camera and had not explained anything about the procedure to be adopted during the enquiry proceedings to the petitioner before starting the enquiry and right from very

beginning, the enquiry officer started misbehaving with the petitioner. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was illegally proceeded against ex-parte by the enquiry officer and ex-parte enquiry was conducted against the petitioner, which is not fair and proper. The second show cause notice was issued against the petitioner, which was duly replied by him. After receiving the reply to second show cause notice, the services of the petitioner have been terminated. The respondent company has sent Rs. 34318/- in the account of the petitioner, which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. Sending the petitioner on deputation from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The deputation order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of the petitioner in the aforesaid manner, tantamount to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workmen as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 28.01.2020 by the respondent company may be set-aside and the petitioner may be reinstated on the same post with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which deem just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filling reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter and filed the reply, which was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer hold the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the

witnesses. The petitioner himself examined and his defense but the petitioner choose to remain away from the enquiry proceedings during the course of enquiry, hence, he was proceeded against ex-parte. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 28.01.2020. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet, which was filed by him within time. After receiving the reply to chargesheet, the respondent management considered the same but was not found satisfactory and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 26.08.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents was duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management but during the proceedings, the petitioner chosen to remain away from the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry report is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of propose penalty was issued to the petitioner. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the deputation letter and as such the respondent management left with no other choice but to dismiss the petitioner and paid him the full and final financial dues amounting to Rs. 34318/- and gratuity amount of Rs. 33370/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1, who tendered into evidence his affidavit EX.RW-1/A, wherein he has reiterated almost all the averments as made in the reply. He also tendered his evidence charge sheet Ex. R-1, reply to chargesheet Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.02.2013 and worked continuously till 2019. The petitioner was sent on deputation to Gujrat. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was sent to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining.

He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice Ex. R-11, copy of proceedings, statement of witnesses and documents Ex. R-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his office at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He admitted that the enquiry report is ex-parte. He denied that the petitioner was wrongly proceeded against ex-parte. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry officer to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence deputation letter Ex. PW-1/B, reply to deputation Ex. PW-1/C, chargesheet Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, suspension letter Ex. PW-1/F, dismissal letter Ex. PW-1/G, appointment of enquiry officer Ex. PW-1/H, letter dated 19.10.2019 Ex. PW-1/J, enquiry report Ex. PW-1/K, 2nd show cause notice Ex. PW-1/L, reply to show cause notice Ex. PW-1/M, demand notice Ex. PW-1/N, reply to demand notice Ex. PW-1/P, letter dated 20.09.2019 Ex. PW-1/Q, formation of union Mark PX-1, documents Mark PX-2 and letter given to Labour Officer Mark PX-3.

12. In cross-examination, he admitted that he was given deputation letter and he had not joined at the deputation place. He further admitted that he was chargesheeted for not joining at deputation place. He admitted that after issuing the chargesheet, enquiry officer was appointed, who issued notice to him. He further admitted that he filed the reply to the chargesheet. He admitted to have joined the enquiry proceedings. He also admitted that procedure was explained to him. He admitted that he appended his signatures on enquiry proceedings. He admitted that he had

not appeared before the enquiry officer after attending the four dates. He further admitted that the enquiry officer issued notices to him after he left attending the enquiry. He denied that the ex-parte enquiry was conducted against him by following the principles of natural justice. He admitted that he was subjected to domestic enquiry for not joining at deputation place. He denied that he was asked before the Labour Officer to join at deputation place.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word “misconduct” is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee’s under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was sent on deputation but refused to report at deputation place. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not reported at deputation place passed. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. It is also an admitted fact that the petitioner duly participated in the enquiry proceedings but after some time he left the enquiry proceedings, hence, the enquiry officer had concluded the enquiry ex-parte and had come to the conclusion that the petitioner had not reported for duties at deputation place and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner and it was the petitioner who had chosen not to participate in the enquiry despite having attended the same in four dates. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him which was duly replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings on four dates and thereafter he had not participated in the enquiry proceedings. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that

proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management and it was not petitioner himself who has not participated in the enquiry despite having been attended the same in four dates.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980. Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not require. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh* (1972) 1 SCC 595 has held as under:

"The recent decision of this Court bearing on this matter is the one rendered in *State Bank of India v. R. K. Jain and others* (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should

have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workmen is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K. Khidta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 201 of 2021, in case titled Ajmer Singh Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to report for his duties at deputational place, which leads to the dismissal of the petitioner, on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl of the respondent company has conducted that this Court/ Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an

industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon’ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon’ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had sent the petitioner on deputation but the petitioner had not joined his duties at place where he was sent on deputation. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.,** if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF Sh. KRISHAN KUMAR, PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number	:	216 of 2021
Instituted on	:	09.11.2021
Preliminary Issue Framed on	:	12.01.2022
Decided on	:	19.12.2023

Kamlesh Kumar s/o late Shri Gopi Chand, r/o Village Jodhyar, P.O. Kango Ka Gehra,
Tehsil Sarkaghat, District Mandi, H.P. ...Petitioner.

VERSUS

The Factory Manager M/s Torrent Pharmaceuticals Ltd., Village Bhud, Makhnu Majra,
Tehsil Baddi, District Solan, H.P. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	Shri R.K. Khidtta, Advocate.
For the Respondent	:	Shri Rajeev Sharma, Advocate.

ORDER

By this order of mine, I shall hereby propose to dispose off the preliminary issue as framed by my Learned Predecessor, in view of law laid down by **Hon'ble Apex Court in Cooper Engineering Limited Vs. Sh. P.P Mundhe 1975 SCC (L&S) 443**, as is evident from the zimini order dated 12.01.2022, reads as under:

2. Heard. On the pleadings of the parties, the following preliminary issues are framed:

1. Whether the domestic enquiry conducted against the petitioner by the respondent is fair and proper? ...OPR.

2. Relief:

3. Briefly stated facts necessary for the disposal of the preliminary issues, as disclosed by the petitioner in the statement of claim are thus that the petitioner was engaged as attendant w.e.f. 15.12.2012 by the respondent company. and worked continuously as such till 03.09.2019. The company vide deputation letter dated 15.07.2019, asked the company to report at their plant Madhya Pradesh. The petitioner filed the detailed reply and requested to cancel the same as the same was issued with intention to victimize the petitioner. The prayer of the petitioner was not accepted and a chargesheet was served upon the petitioner, which was duly replied by him. After receiving the reply filed by the petitioner, he was suspended w.e.f. 03.09.2019. The services of the petitioner have been terminated by the respondent w.e.f. 28.01.2020, without assigning any reasons and without complying with the mandatory provisions of the Act. The petitioner was not allowed to enter in the company w.e.f. 16.07.2019 till 03.09.2019 and salary for this period was not paid to him. The services of the petitioner have been terminated on the false allegations and without conducting fair and proper enquiry. The petitioner along-with other workers served request letter dated 12.10.2018 to the respondent company with regard to the formation of the union, which was received by the company and after receiving the letter, the respondent company became inimical towards the petitioner and other workers and started harassing the workers on one pretext to another. After receiving the reply, the respondent decided to conduct the enquiry against the petitioner. Shri Hardesh Sharma, Advocate was appointed as an enquiry officer, who was not an independent person as he is associated with the company since the year, 2015 and has represented the company in many cases against the worker as management representative and even the enquiry officer is the real son of the counsel of the respondent company Shri Rajeev Sharma, who is looking after the entire cases of the respondent company and is also counsel in the present case. Both father and son are in the same profession, hence the appointment of Shri Hardesh Sharma, as an enquiry officer was not fair and proper and the enquiry conducted by the respondent company was just eye wash. The enquiry officer started the enquiry in his personal room/office under the surveillance of CCTV camera and had not explained anything about the procedure to be adopted during the enquiry proceedings to the petitioner before starting the enquiry and right from very beginning, the enquiry officer started misbehaving with the petitioner. The enquiry officer gave his report as per the wishes of the company as he was duly paid for the same. The enquiry officer used to right down the things which favours the company by ignorant things which favours the petitioner. During the enquiry proceedings the petitioner demanded the certified standing orders but the same was not supplied to him due to which the petitioner could not defend himself properly. No defense assistant was allowed and even the petitioner was not allowed to lead his evidence properly. The petitioner was illegally proceeded against ex-parte by the enquiry officer and ex-parte enquiry was conducted against the petitioner, which is not fair and proper. The second show cause notice was issued against the petitioner, which was duly replied by him. After receiving the reply to second show cause notice, the services of the petitioner have been terminated. The respondent company has sent Rs. 34318/- in the account of the petitioner, which was deposited without his consent. The enquiry officer travelled beyond the charges levelled against the petitioner and has given the findings on such charges which were not levelled against the petitioner in the charge sheet-cum-suspension letter. The intention of the respondent management right from the very beginning was to terminate the services of the petitioner by alleging false allegations. After receiving the termination order the petitioner filed demand notice but due to adamant attitude of the respondent, the conciliation proceedings failed. Sending the petitioner on deputation from Baddi to Gujrat was totally illegal as the same has been made with an intention to harass the petitioner and to break the union of the workers. The deputation order was not justified in any manner as the same was made without following any criteria. The work which was petitioner performing in the respondent company is still available and the same is being performed through the contract level and through junior person to the petitioner. The petitioner and other terminated worker used to talk on behalf of the other workers working in the factory with the respondent company regarding the settlement of the demand of the workers from time to time and due to this reason the company has victimized the petitioner and other active members of the union. The termination of the service of

the petitioner in the aforesaid manner, tantamount to unfair labour practice for which the petitioner is victim and the action of the company is against the provisions of the Act. The petitioner is a workman as defined under the Act. The impugned termination order passed by the respondent company is illegal, unjust, arbitrary and against the principle of the natural justice, hence, the same deserves to be quashed and set-aside. The claim petition may kindly be allowed and the enquiry report submitted by the enquiry officer may be set-aside and the order passed on 28.01.2020 by the respondent company may be set-aside and the petitioner may be reinstated on the same post with full back wages and other service benefits i.e. seniority and continuity. The respondent company may also be burdened with the cost of litigation amounting of Rs. 50,000/- and the respondent company may also be directed to pay Rs. 5 Lakh as damages for the mental as well as financial harassment caused to the petitioner. Any other order which seems just and proper in the present facts and circumstances of the case may kindly be passed in favour of the petitioner.

4. The respondent resisted and contested the claim petition by filing reply in which they have taken the preliminary objections qua maintainability, not approached this court with clean hands, suppression of material facts, reference is not legal one as the appropriate authority has not referred the present reference as laid down under the Act. An additional plea was also taken that the petitioner indulged in grave misconduct during the course of his employment and accordingly charge sheet was issued to the petitioner as per certified standing orders of the company. The petitioner received the charge sheet-cum-suspension letter and filed the reply, which was not found satisfactory, hence, keeping in view the principles of natural justice and as per the procedure laid down under certified standing orders, the respondent management took the decision to hold an independent enquiry and appointed an outsider to hold enquiry into the misconduct of the petitioner and informed the petitioner regarding the appointment of the enquiry officer and management representative. The enquiry officer held the enquiry as per the certified standing orders of the company and as per the principles of natural justice. The enquiry officer afforded full opportunity to the petitioner to produce his evidence and he was given opportunity to cross-examine the witnesses. The petitioner himself examined and his defense but the petitioner chose to remain away from the enquiry proceedings during the course of enquiry, hence, he was proceeded against ex-parte. The enquiry was conducted in lawful manner. The petitioner is gainfully employed and earning more than the amount, which was earning from the respondent.

5. On merits, it is admitted that the petitioner was working with the respondent company and dismissal orders were passed on 28.01.2020. The real facts of the case are that the petitioner indulged in grave misconduct and accordingly he was charge sheeted as per the certified standing orders of the company. The petitioner was called to file the reply of the charge sheet within 48 hours after receiving the charge sheet, which was filed by him within time. After receiving the reply to chargesheet, the respondent management considered the same but was not found satisfactory and then the respondent took the decision to hold an independent enquiry in the charge sheet and appointed an outsider to hold an independent enquiry into the misconduct of the petitioner. The petitioner was duly informed vide letter dated 26.08.2019 regarding the appointment of enquiry officer and he was advised to take part in the enquiry proceedings. The petitioner participated in the enquiry proceeding. The enquiry officer conducted the enquiry in lawful manner and the photo copies of the enquiry proceedings, statement of witnesses, documents were duly supplied to the petitioner. The petitioner was provided full opportunity to cross-examine the witnesses of the respondent management but during the proceedings, the petitioner chose to remain away from the enquiry proceedings, hence, he was proceeded against ex-parte. The enquiry report is based on the documents supplied during the course of enquiry proceedings. After going through all evidence, documents and admission made by the petitioner in his reply to the cross-examination by the management during the course of the enquiry, the respondent management came to the conclusion that the petitioner is not in a position to serve with the respondent management, hence, second show cause notice in the shape of proposed penalty was issued to the

petitioner. The reply filed by the petitioner to second show cause notice was on the same lines as of reply to the deputation letter and as such the respondent management left with no other choice but to dismiss the petitioner and paid him the full and final financial dues amounting to Rs. 34318/- and gratuity amount of Rs. 33370/-. The other allegations are denied with the prayer that the petition be dismissed.

6. The petitioner filed rejoinder to the reply filed by the respondent and reaffirmed the claim put forth in the statement of claim.

7. On the aforesaid pleadings, sufficient opportunities were afforded to the parties to lead their respective evidence in support of their case. The respondent has examined Shri Soumen Maiti as RW-1, who tendered into evidence his affidavit EX.RW-1/A, wherein he has reiterated almost all the averments as made in the reply. He also tendered his evidence charge sheet Ex. R-1, reply to chargesheet Ex. R-2, setting of enquiry Ex. R-3, appointment of enquiry officer Ex. R-4, representing officer letter Ex. R-5, second show cause notice Ex. R-6, reply to second show cause notice Ex. R-7, dismissal letter Ex. R-8, demand notice Ex. R-9 and reply to demand notice Ex. R-10.

8. In cross-examination, he admitted that the petitioner was engaged as attendant w.e.f. 01.02.2013 and worked continuously till 2019. The petitioner was sent on deputation to Gujrat. He admitted that there is no mention of joining period in the transfer letter and except due to exigency of work no other reason for transfer was mention. Volunteered that the transfer order was issued in line with appointment letter and certified standing orders. He denied that the respondent transferred its employee without any reason. He further denied that the petitioner and other workmen formed the union on 12.10.2018, to which the information was sent to the respondent. He denied that the enquiry officer is associated with the company. He further denied that the enquiry officer was appointed as Management Representative vide letter dated 03.07.2015, which is prior to his joining. He admitted that he has written his affidavit he has joined in 2004. He expressed his ignorance that Shri Hardesh Sharma, is the son of respondent counsel Shri Rajeev Sharma. The enquiry was conducted in the M.C. Building belonging to M.C. Nalagarh. He denied that the enquiry was not conducted by following the principles of natural justice and fairly. He cannot say that the petitioner was neither junior nor senior most as per the rule of the company. He denied that the petitioner was transferred to harass him and to break the union. He also denied that proper and fair enquiry was not conducted.

9. Shri Hardesh Sharma, Advocate appeared into the witness box as RW-2 and tendered in evidence his affidavit EX. RW-2/A. He also tendered his evidence notice Ex. R-11, copy of proceedings, statement of witnesses and documents Ex. R-12, enquiry report Ex. R-13 and certificate under section 65-B Ex. R-14.

10. In cross-examination, he admitted that letter Mark PX-1 was signed by him. He admitted that he was representing the company in the year, 2015. He denied that he is linked with the company since, 2015. He admitted that the enquiry proceeding were conducted in his officer at Nalagarh and CCTV Cameras were installed during the enquiry proceeding. He deposed that the procedure was explained to the workers on the first day of the enquiry. He denied that there is no details mentioned in the zemini orders of the enquiry proceeding regarding the procedure to be adopted by the conducting enquiry. He denied that the CCTV footage of under the control of the management. He denied that he had not followed the principles of natural justice and conducted the enquiry on his own. He further denied that the workers were not supplied the documents as demanded by them. He denied that the workers had written a letter to him for the change of enquiry officer. He denied that the petitioner was not allowed to engage the defence assistant. He admitted that the enquiry report is ex-parte. He denied that the petitioner was wrongly proceeded against ex-

parte. He also denied that the report was prepared at the instance of the company. He denied that there is no mention in the chargesheet that the allegation levelled against the petitioner is minor or major misconduct. He admitted that he was paid as enquiry officer to conduct the enquiry by the company. He denied that he put the question to the witnesses on his own and he used to record the version favourable to the company and used to ignore the version favoured to the workers. He denied that he had asked the workers to reply properly otherwise he will be shunted out of the office. He denied that he ousted the petitioner from his office during the course of enquiry. He further denied that the petitioner was not allowed to examine the defence witnesses and he prepared a false report at the instance of the company. He also denied that no allegation was proved during the enquiry and he has not conducted the enquiry fairly and as per the principles of natural justice.

11. In order to rebut, the petitioner stepped into the witness dock as (PW-1) and tendered in evidence his affidavit (PW-1/A), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered in evidence deputation letter Ex. PW-1/B, reply to deputation Ex. PW-1/C, chargesheet Ex. PW-1/D, reply to chargesheet Ex. PW-1/E, suspension letter Ex. PW-1/F, dismissal letter Ex. PW-1/G, appointment of enquiry officer Ex. PW-1/H, letter dated 19.10.2019 Ex. PW-1/J, enquiry report Ex. PW-1/K, 2nd show cause notice Ex. PW-1/L, reply to show cause notice Ex. PW-1/M, demand notice Ex. PW-1/N, reply to demand notice Ex. PW-1/P, letter dated 20.09.2019 Ex. PW-1/Q, formation of union Mark PX-1, documents Mark PX-2 and letter given to Labour Officer Mark PX-3.

12. In cross-examination, he admitted that he was given deputation letter and he had not joined at the deputation place. He further admitted that he was chargesheeted for not joining at deputation place. He admitted that after issuing the chargesheet, enquiry officer was appointed, who issued notice to him. He further admitted that he filed the reply to the chargesheet. He admitted to have joined the enquiry proceedings. He also admitted that procedure was explained to him. He admitted that he appended his signatures on enquiry proceedings. He admitted that he had not appeared before the enquiry officer after attending the four dates. He further admitted that the enquiry officer issued notices to him after he left attending the enquiry. He denied that the ex-parte enquiry was conducted against him by following the principles of natural justice. He admitted that he was subjected to domestic enquiry for not joining at deputation place. He denied that he was asked before the Labour Officer to join at deputation place.

13. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner union, as well Learned Senior Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

14. My findings on the preliminary issue that the enquiry conducted by the respondent management against the petitioner is fair and proper are hereby recorded as here under:

15. At the very inception, the word "misconduct" is a generic term while insubordination, neglect to work etc., are species thereof. Misconduct means which arises from ill motive. However, the acts of negligence, error of innocent mistake or act done bonafide mistake do not constitute such misconduct. In industrial jurisprudence amongst others, habitual or gross negligence constitutes misconduct but in one case in the absence of standing orders governing the employee's under taking, unsatisfactory work was treated as misconduct. The concept of misconduct in employee and employer relationship is based upon the nature and relationship itself and implied and express condition of service. However, it was depend upon each facts and circumstances of the case. In fact, any breach of any express and implied duty on the part of the employee, unless it be trifling nature would be a misconduct. It arises if a person does what he should have not done and does not do what he should have done or any un-business, like conduct including negligence or want of necessary care and caution. The misconduct is doing something or omitting to do

something which is wrong to do or omit whereas the person who is guilty of the act or the omission knows that the act which he is doing or that which he is omitting to do, is a wrong thing to do or omit. The terms misconduct also includes neglect of duties.

16. In the instant case, there is absolutely no denial to the fact that the petitioner was chargesheeted on the ground that he was sent on deputation but refused to report at deputation place. It is alleged that the petitioner has indulged himself in an act of insubordination as he has not reported at deputation place passed. It is admitted that the petitioner was chargesheeted and the enquiry officer was appointed. It is also an admitted fact that the petitioner duly participated in the enquiry proceedings but after some time he left the enquiry proceedings, hence, the enquiry officer had concluded the enquiry ex-parte and had come to the conclusion that the petitioner had not reported for duties at deputation place and made the insubordination, which is misconduct on the part of the petitioner. The perusal of the enquiry report, would reveal that the reasonable opportunities of being heard were afforded to the petitioner and it was the petitioner who had chosen not to participate in the enquiry despite having attended the same in four dates. The petitioner while appearing into the witness box as PW-1, admitted that the chargesheet was served upon him which was duly replied by him. He further admitted in his cross-examination that he participated in the enquiry proceedings on four dates and thereafter he had not participated in the enquiry proceedings. He also admitted that he was dismissed from the service and full and final payment was also deposited in his account at the time of the dismissal. The enquiry officer (RW-2), in his cross-examination, has denied that no reasonable opportunity of being heard was afforded to the petitioner during enquiry and that enquiry report was prepared by him on the asking of the management.

17. The net result of the entire case record i.e enquiry report, pleadings of the parties as well as deposition of the witnesses before the Court, I arrive at an inescapable conclusion that proper, due and reasonable opportunities were afforded to the petitioner during the course of enquiry proceedings.

18. Verily, I am of the considered opinion that from the attendant facts and circumstances of the case appearing before me, this Court/Tribunal reaches to its legitimate conclusion that the enquiry against the petitioner has been conducted as per the model standing orders by following the principles of natural justice. As a matter of fact all the codal formalities have duly been complied with by the respondent management and it was not petitioner himself who has not participated in the enquiry despite having been attended the same in four dates.

19. The Ld. Counsel for the petitioner also argued that the enquiry officer was representing the company and during the entire proceedings he has favoured the respondent company, hence, the enquiry conducted by him is not as per the standing orders applicable to the respondent company. As per law laid down by the **Hon'ble Apex Court in Civil Appeal No. 1657 of 1999, case titled as MGMT of Thanjavur Textiles Ltd. Vs. B. Purshotham and Ors.**, has held that the **Manager of the company had the enquiry conducted by an Advocate who apart from recording the evidence also submitted the findings against the employees in relation to the charges. Based on the said enquiry report and the findings the Manager passed an order of dismissal on 24.11.1980.** Admittedly, the Advocate has given the finding regarding the misconduct of the workman and as per the aforesaid authority it is also concluded that the Advocate have all the normal powers of an enquiry officer including the power to give findings as to misconduct of the employees. Therefore, the contention raised by the Ld. Counsel for the petitioner has no effect and bearing to the present case.

20. The other contention of the Ld. Counsel for the petitioner is that the petitioner has requested for the change of the enquiry officer but there is no allegations against the enquiry officer

and by merely saying that the enquiry officer is not like them is not a ground to change the enquiry officer. Moreover, it is settled law that standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceedings, such a strict proof of misconduct is not required. The proceedings under the domestic enquiry is the preponderance of probabilities that constitutes the test to be applied.

21. For the foregoing reasons, this Court comes to an inescapable conclusion that the enquiry conducted by the enquiry officer (RW-2) by following the principles of natural justice. The petitioner was given full opportunity to produce defence assistant to defend his case in the enquiry and cross-examine the witnesses. Accordingly preliminary issue is decided in favour of the respondent management and against the petitioner.

RELIEF:

22. As a sequel to my foregoing discussion on preliminary issue, the enquiry conducted against the petitioner is fair and proper.

23. The Hon'ble Supreme Court in **Kurukshetra University Vs. Prithvi Singh (2018) 4 SCC 483** has held under para 25 and 26, as under:

“25. In the light of the foregoing discussion, we cannot countenance the approach and the manner in which the Labour Court and the High Court dealt with the issues arising in the case. The award of the Labour Court and judgment of the High Court are, therefore, held per se without jurisdiction and legally unsustainable. In view of the foregoing discussion, we allow the appeal, set aside the award of the Labour Court to the extent indicated above and the judgment of the High Court and remand the case to the Labour Court.

26. The Labour Court will now afford the appellant (employer) an opportunity to lead evidence to prove the misconduct alleged by them in the written statement against the respondent and depending upon the findings, which the Labour Court would record on the issue of misconduct, the issue of termination would be decided in the light of what we have observed supra.

24. The Hon'ble Apex Court in **Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh (1972) 1 SCC 595** has held as under:

“The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its contention that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by adducing evidence

before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity, or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether 'the order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

"If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. On that point, the management will fail. , On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

"It was further held that it may be open to the management to request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was held on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

25. Again their Lordships of Hon'ble Supreme Court, in case titled as *Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr decided on 4 May, 1979 with Equivalent citation 1979 AIR 1652* has held as under:

"It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the

inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and in the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity".

26. As a binding precedent, this Court/Tribunal is of the considered opinion that now, this Court would adjudicate upon or determine the question as to whether the punishment imposed upon the petitioner/delinquent should be upheld or interfered with by exercising the powers under section 11-A of the Act.

Announced in the open Court today this 19th day of December., 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

Re-called/Taken up again

30.12.2023

Present: Shri R.K. Khidtta, Advocate for petitioner.
Shri Rajiv Sharma, Advocate for respondent.

HEARD ON QUANTUM OF SENTENCE/ PUNISHMENT

Shri R.K. Khidtta, Ld. Csl. for petitioner has argued that the dismissal of the service of the petitioner by the respondent company after conducting domestic enquiry allegedly without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), is illegal and unjustified. It is contended that this Court/ Tribunal vide its award/order dated 19.12.2023, passed in reference no. 216 of 2021, in case titled Kamlesh Kumar Vs. Torrent Pharma., concluded that the domestic enquiry conducted by the Enquiry Officer against the petitioner is just fair and proper and there is no violation of principles of natural justice. All the safe guard provided under the Model Standing Orders were duly complied with. The domestic enquiry stood duly substantiated and proved on record. Now, this matter has been put up before the Court for hearing on quantum of sentence/punishment. It is argued that the dismissal of the petitioner on the conclusion of the enquiry is absolutely disproportionate to the main allegations levelled against the petitioner. It is not at all in commensuration with the punishment awarded to the petitioner by the respondent company. The respondent company is bit harsher on ordering the dismissal of the petitioner leaving besides that the petitioner will be out of job and put a stigma on his entire carrier. The petitioner is a poor person and he is the only bread earner of his family. The main plank of the allegation for initiating domestic enquiry against the petitioner is that he has refused to report for his duties at deputational place, which leads to the dismissal of the petitioner,

on the sole ground, is not sustainable. All the efforts were made by the respondent management when the petitioner disclosed that they have formed the union and in order to break the union, the petitioners were transferred from that place only with the intention not to form the union in the company. The punishment awarded by the respondent company on the basis of enquiry report is not at all warranted. It is, therefore, prayed that lenient view may please be taken and penalty on lesser side be awarded against him.

2. Per contra, the Ld. Csl. of the respondent company has conducted that this Court/Tribunal vide its award dated 19.12.2023, has rightly concluded that the enquiry conducted against the petitioner is fair, proper and legal. So far as concerning the quantum of punishment awarded by the respondent company had rightly dismissed the services of the petitioner. The punishment awarded by the respondent company is commensurating with the allegations levelled against the petitioner in the domestic enquiry, which is satisfactorily proved on record. There is no question of awarding the less punishment as the petitioner intentionally refused to accept the transfer order passed by the respondent management. The allegations levelled against the petitioner stood proved during the domestic enquiry. He argued that all the contentions raised at bar by the Ld. Counsel for the petitioner carries no weight in the eyes of law. It is therefore, prayed that the prayer of the Ld. Counsel for the petitioner for awarding sentence of lesser side may kindly be rejected.

3. I have heard both the counsel and have also gone through the entire case record.

4. Before proceeding further, I would like to invite the attention of the parties to the provisions of **section 11-A** of the Act, which is reproduced for the sake of convenience as hereunder:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

5. In all fairness by now it is fairly well recognized principle that after insertion of section 11-A, it is more than clear that the Labour Court has the jurisdiction and power to substitute its measure of punishment in place of managerial wisdom, provided that the order of dismissal was not justified in the facts and circumstances of the case. In this behalf support can ably be drawn from the Judgment of the Hon'ble Supreme Court titled as **Ramakant Misra Vs. State of UP and others AIR 1982 SC 1552**. The aforesaid ratio has been further re-affirmed by the Hon'ble Supreme Court in **Civil Appeal no. 4436 of 2010 titled as Nicholas Piramal India Ltd. Vs. Hari Singh decided on 30.4.2015**, holding that the “doctrine of proportionality” is to be applied to the facts and situation of each case and if the punishment is disproportionate to the gravity of misconduct it would be appropriate to alter the punishment so imposed. It has been further held that the past conduct of the workman is also required to be notified to the delinquent before the order of dismissal is passed.

6. In the instant case it has come on record that the respondent company had sent the petitioner on deputation but the petitioner had not joined his duties at place where he was sent on deputation. The management ordered to hold the domestic enquiry against the petitioner as per the standing orders and after conducting the domestic enquiry, the respondent management passed the dismissal order. In this case, it is proved that the domestic enquiry conducted against the petitioner is proper and valid, however, the order of termination/dismissal of the petitioner awarding punishment to the petitioner is not wholly justified. In my humble opinion, in the attendant facts and circumstances of the case, I am of the considered opinion that the dismissal order by paying some lump sum compensation, would not be justified. This Court had given due vantage to the entire facts and circumstances of the case.

7. Now, it has to be seen as to what benefit the petitioner is entitled to. In my humble opinion, the full & final amount paid to the petitioner at the time of dismissal is not proper, therefore, it would be appropriate to pass an order for payment of lump sum compensation amounting to ₹ 50,000/- (₹ Fifty Thousand only), is awarded in favour of the petitioner.

8. Bearing in mind the peculiar attendant facts and circumstances of the case vis-à-vis bearing in mind the mode, manner and magnitude of the misconduct or qua the allegations levelled against the petitioner committed by the petitioner, the respondent company is hereby directed to pay a full and final settlement amount of **₹ 50,000/- (₹ Fifty Thousand only) as lump sum compensation** to the petitioner **within two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. It is expressly made clear that apart from lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc.**, if any, in accordance with law.

9. The reference is answered in the aforesaid terms. The award dated 19.12.2023, passed in this case shall remain part and parcel of this Award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 30th Day of December, 2023.

Sd/-
(KRISHAN KUMAR),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

LAW DEPARTMENT

NOTICE

Shimla-2, the 3rd December, 2024

No. LLR-E (9)-1/2018-Leg.—Whereas, the following Advocate of District Mandi, H.P. has applied for appointment of notary in the place and area mentioned against her name under rule 4 of the Notaries Rules, 1956;

Sl. No.	Name of Applicant	Area for which she has applied for appointment of Notary
1.	Smt. Mamta Thakur w/o Sh. Chhyal Singh, r/o Village Suin, Post Office & Sub-Tehsil Pangna, District Mandi, H.P. 175046.	Sub-Division Karsog/Sub-Tehsil Pangna, District Mandi.

Therefore, I undersigned in exercise of the powers conferred *vide* Government Notification No. LLR-A(2)-1/2014-Leg. Dated 3rd March, 2023, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of seven days from the date of publication of this notice in the Rajpatra (e-Gazette), Himachal Pradesh against her appointment as notary in Sub-Division Karsog/ Sub-Tehsil Pangna, District Mandi.

Sd/-
(RAJINDER SINGH TOMAR),
(Competent Authority),
Addl.LR-cum-Additional Secretary (Law-Eng.).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-1 / 2022-लेज.—श्री दिगविजय मल्होत्रा, अधिवक्ता, ज्वाली ने उप मण्डल ज्वाली, जिला कांगड़ा की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री दिगविजय मल्होत्रा, अधिवक्ता को उप-मण्डल ज्वाली, जिला कांगड़ा की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-1 / 2022-Leg., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024

No. LLR-E(9)-1/2022-Leg.—WHEREAS, Shri Digvijay Malhotra Advocate Jawali has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Sub-Division Jawali of District Kangra;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Shri Digvijay Malhotra, Advocate as notary within the limits of Sub-Division Jawali of District Kangra, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-1 / 2022-लेज.—श्री रजनीश कुमार, अधिवक्ता, ज्वाली ने उप मण्डल ज्वाली, जिला कांगड़ा की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः, हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री रजनीश कुमार, अधिवक्ता को उप-मण्डल ज्वाली, जिला कांगड़ा की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-1 / 2022-Leg., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024

No. LLR-E(9)-1/2022-Leg.—WHEREAS, Shri Rajneesh Kumar, Advocate Jawali has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Sub-Division Jawali of District Kangra;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Shri Rajneesh Kumar, Advocate as notary within the limits of Sub-Division Jawali of District Kangra, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-4 / 2023-लेज.—श्री नितीश बहल, अधिवक्ता, इंदौरा ने उप मण्डल इंदौरा, जिला कांगड़ा की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः, हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री नितीश बहल, अधिवक्ता को उप-मण्डल इंदौरा, जिला कांगड़ा की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-4 / 2023-Leg., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024

No. LLR-E(9)-4/2023-Leg.—WHEREAS, Shri Nitish Behl, Advocate Indora has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Sub-Division Indora of District Kangra;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Shri Nitish Behl, Advocate as notary within the limits of Sub-Division Indora of District Kangra, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-2 / 2022-लेज.—श्रीमती मंजू बाला राणा, अधिवक्ता, पालमपुर ने तहसील पालमपुर, जिला कांगड़ा की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्रीमती मंजू बाला राणा, अधिवक्ता को तहसील पालमपुर, जिला कांगड़ा की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-2 / 2022-Leg., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024

No. LLR-E(9)-2/2022-Leg.—WHEREAS, Smt. Manju Bala Rana, Advocate Palampur has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Tehsil Palampur of District Kangra;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Smt. Manju Bala Rana, Advocate as notary within the limits of Tehsil Palampur of District Kangra, Himachal Pradesh with immediate effect with the direction that her name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-2 / 2021-लेज.—श्री राकेश, अधिवक्ता, शिमला ने उप-मण्डल शिमला (शहरी), जिला शिमला की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री राकेश, अधिवक्ता को उप-मण्डल शिमला (शहरी), जिला शिमला की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-2 / 2021-Leg., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024

No. LLR-E(9)-2/2021-Leg.—WHEREAS, Shri Rakesh, Advocate Shimla has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Sub-Division Shimla (U) of District Shimla;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Shri Rakesh, Advocate as notary within the limits of Sub-Division Shimla(U) of District Shimla, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-2 / 2021-लेज.—श्री रितेश बनयाल, अधिवक्ता, शिमला ने उप-मण्डल शिमला (शहरी), जिला शिमला की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री रितेश बनयाल, अधिवक्ता को उप-मण्डल शिमला (शहरी), जिला शिमला की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-2 / 2021-Leg., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024

No. LLR-E(9)-2/2021-Leg.—WHEREAS, Shri Ritesh Banyal, Advocate Shimla has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Sub-Division Shimla (U) of District Shimla;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Shri Ritesh Banyal, Advocate as notary within the limits of Sub-Division Shimla(U) of District Shimla, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-2 / 2021-लेज.—श्री विशाल कश्यप, अधिवक्ता, शिमला ने उप-मण्डल शिमला (शहरी), जिला शिमला की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः; हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री विशाल कश्यप, अधिवक्ता को उप-मण्डल शिमला (शहरी), जिला शिमला की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-2 / 2021-Leg., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024.

No. LLR-E(9)-2/2021-Leg.—WHEREAS, Shri Vishal Kashyap, Advocate Shimla has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Sub-Division Shimla (U) of District Shimla;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Shri Vishal Kashyap, Advocate as notary within the limits of Sub-Division Shimla(U) of District Shimla, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-2 / 2024-लेज.—श्री उज्ज्वल सैन मेहता, अधिवक्ता, कुमारसैन ने उप मण्डल कुमारसैन, जिला शिमला की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री उज्ज्वल सैन मेहता, अधिवक्ता को उप-मण्डल कुमारसैन, जिला शिमला की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-2 / 2024-Leg., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024

No. LLR-E(9)-2/2024-Leg.—WHEREAS, Shri Ujjwal Sain Mehta, Advocate Kumarsain has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Sub-Division Kumarsain of District Shimla;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Shri Ujjwal Sain Mehta, Advocate as notary within the limits of Sub-Division Kumarsain of District Shimla, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-14 / 2022-लेज.—श्री रितेश अचल शर्मा, अधिवक्ता, जुब्बल ने तहसील जुब्बल, जिला शिमला की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षात्कार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री रितेश अचल शर्मा, अधिवक्ता को तहसील जुब्बल, जिला शिमला की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित्त बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-14/2022-Leg., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024

No. LLR-E(9)-14/2022-Leg.—WHEREAS, Shri RiteshAchal Sharma, Advocate Jubbal has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Tehsil Jubbal of District Shimla;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Shri Ritesh Achal Sharma, Advocate as notary within the limits of Tehsil Jubbal of District Shimla, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

विधि विभाग

अधिसूचना

शिमला-2, 7 दिसम्बर, 2024

संख्या एल0एल0आर0-ई(9)-41/2005-लेज-।—श्री विद्या सागर, अधिवक्ता, ठियोग ने उप-मण्डल ठियोग, जिला शिमला की सीमाओं के भीतर, नोटरी के रूप में नियुक्ति के लिए नोटरी अधिनियम, 1952 (1952 का 53) और उसके अन्तर्गत नोटरी नियम, 1956 के अधीन आवेदन किया है और इस सम्बन्ध में अधिनियम और नियमों द्वारा अपेक्षित सभी औपचारिकताएं पूरी कर ली हैं।

अतः हिमाचल प्रदेश के राज्यपाल, उक्त नियमों के नियम 7क के उप-नियम (2) के अन्तर्गत गठित साक्षातकार बोर्ड की सिफारिश पर उक्त नियमों के नियम 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री विद्या सागर, अधिवक्ता को उप-मण्डल ठियोग, जिला शिमला की सीमाओं के भीतर तुरन्त प्रभाव से नोटरी नियुक्त करते हैं तथा यह भी निर्देश देते हैं कि इनका नाम सरकार द्वारा इस निमित बनाए गए रजिस्टर में दर्ज कर लिया जाए।

आदेश द्वारा,

शरद कुमार लगवाल,
विधि परामर्शी एवम् सचिव (विधि)।

[Authoritative English text of this Department Notification No. LLR-E(9)-41 / 2005-Leg-I., Dated 07-12-2024 as required under Article 348(3) of the Constitution of India].

LAW DEPARTMENT

NOTIFICATION

Shimla-2, the 07th December, 2024

No. LLR-E(9)-41/2005-Leg-I—WHEREAS, Shri Vidya Sagar, Advocate Theog has applied for appointment as notary under the Notaries Act, 1952 (53 of 1952) and the rules framed thereunder, within the territorial limits of Sub-Division Theog of District Shimla;

AND WHEREAS, all the requirements as provided under the said Act and rules have been complied with;

NOW, THEREFORE, the Governor, Himachal Pradesh, on the recommendations of the Interview Board, constituted under sub-rule(2) of rule 7A of the said rules, and in exercise of the powers conferred by rule 8 of the said rules, is pleased to appoint Shri Vidya Sagar, Advocate as notary within the limits of Sub-Division Theog of District Shimla, Himachal Pradesh with immediate effect with the direction that his name may be entered in the Register of notaries maintained by the Government.

By order,

SHARAD KUMAR LAGWAL,
LR-cum-Secretary (Law).

CHANGE OF NAME

I, Chuhru Ram s/o Surtu, Village Batheri, PO Batheri, Tehsil Padhar, District Mandi (H.P.) in my Aadhar No. 950084508317 as Chuhd Ram wrongly entered correct name is Chuhru Ram. Note please.

CHUHRU RAM
*s/o Surtu,
Village Batheri, PO Batheri, Tehsil Padhar,
District Mandi (H.P.).*

CHANGE OF NAME

I, Chhering Tanzom (49) w/o Tashi Funchok, r/o VPO Kanam, Tehsil Pooh, District Kinnaur (H.P.) declare that in my son Lobzang Karma's (CBSE Roll No. 17267459) matriculation certificate my name is mis-spelt as Chhering Tenzom instead of my correct name Chhering Tanzom. All concerned please note.

CHHERING TANZOM
*w/o Tashi Funchok,
r/o VPO Kanam, Tehsil Pooh,*

CHANGE OF NAME

I, Devinder Singh s/o Sh. Manohar Lal, r/o Village Koti, P.O. Kathog, Tehsil Theog, District Shimla (H.P.) declare that I have changed my nephew name from Kush Chandel to Krish Chandel. Concerned note.

DEVINDER SINGH
s/o Sh. Manohar Lal,
r/o Village Koti, P.O. Kathog,
Tehsil Theog, District Shimla (H.P.).

CHANGE OF NAME

I, Baldev Singh s/o Sh. Tula Ram aged about 44 years, r/o Village Bani, P.O. Dumehar Bani, Tehsil Kandaghat, District Solan (H.P.) Pin-173215 declare that I have changed my minor daughter's name from Deeya (Previous Name) to Diya Kashyap (New Name). All concerned please may note.

BALDEV SINGH
s/o Sh. Tula Ram,
r/o Village Bani, P.O. Dumehar Bani,
Tehsil Kandaghat, District Solan (H.P.).

CHANGE OF NAME

I, Prago Devi (91) d/o Bela Ram, r/o Village Majhodi, P.O. Panog, Tehsil Kotkhai, District Shimla (H.P.) declare that after my marriage my name was changed to Usha Thakur, Both Prago Devi and Usha Thakur is one and same person. I have changed my name to Prago Devi for all purposes. All concerned may please note.

PRAGO DEVI
d/o Bela Ram,
r/o Village Majhodi, P.O. Panog,
Tehsil Kotkhai, District Shimla (H.P.).

CHANGE OF NAME

I, Kishor Kumar s/o Sh. Amar Neel, r/o Village Rumthal, P.O. Thaila, Tehsil Sunni, District Shimla, H.P.-171007 declare that I have changed my daughter name from Megha to Jagriti Sharma. All concerned please note.

KISHOR KUMAR
s/o Sh. Amar Neel,
r/o Village Rumthal, P.O. Thaila,

*Tehsil Sunni, District Shimla (H.P.).***CHANGE OF NAME**

I, Joginder Singh s/o Sh. Layak Ram, r/o Village Khanar, P.O. Mundu, Tehsil Theog, District Shimla (H.P.) solemnly affirm and declare that my daughter's correct name is Divyanshi Tajta as per her birth certificate but in her Aadhar Card No. 2575 2559 7271 entered as Dhivanshu Tajta which incorrect. Correct name may be entered in her Aadhar Card as Divyanshi Tajta.

JOGINDER SINGH*s/o Sh. Layak Ram,**r/o Village Khanar, P.O. Mundu,**Tehsil Theog, District Shimla (H.P.).***CHANGE OF NAME**

I, Meenakshi Beakta d/o Sh. Rajender Singh, r/o Village Bagain, Tehsil Theog, District Shimla (H.P.) declare that in my all records my name is entered as Meenakshi. My surname is not entered and I want to enter my name as Meenakshi Beakta in place of Meenakshi. All concerned please note.

MEENAKSHI BEAKTA*d/o Sh. Rajender Singh,**r/o Village Bagain ,**Tehsil Theog, District Shimla (H.P.).***CHANGE OF NAME**

I, Nisha Thakur d/o Sh. Ramanand, r/o Village Dehna, Tehsil Theog, District Shimla (H.P.) declare that in my all records my name is entered as Nisha. My surname is not entered and I want to enter my name as Nisha Thakur in place of Nisha. All concerned please note.

NISHA THAKUR*d/o Sh. Ramanand,**r/o Village Dehna, Tehsil Theog,**District Shimla (H.P.).***CHANGE OF NAME**

I, Ajay Kumar s/o Shaharu Ram, VPO Sudhar, Tehsil Padhar, District Mandi (H.P.) in my Aadhar No. 3798 9463 4031 as Raju wrongly entered correct name is Ajay Kumar.

AJAY KUMAR*s/o Shaharu Ram,**VPO Sudhar, Tehsil Padhar,*

CHANGE OF NAME

I, Sunita Devi w/o Panna Lal, VPO Bakhrot, Tehsil Karsog, District Mandi (H.P.) in my Aadhar No. 8567 5685 9009 as Sapna wrongly entered correct name is Sunita Devi.

SUNITA DEVI
w/o Panna Lal,
VPO Bakhrot, Tehsil Karsog,
District Mandi (H.P.).

CHANGE OF NAME

I, Ravinder Kumar s/o Madhav Ram, r/o Village Gawahan, P.O. Padwahan, Tehsil Padhar, District Mandi (H.P.) my minor son shisu wrongly entered in Aadhar No. 4155 0309 0100 correct name is Aditya Thakur.

RAVINDER KUMAR
s/o Madhav Ram,
Village Gawahan, P.O. Padwahan, Tehsil Padhar,
District Mandi (H.P.).

CHANGE OF NAME

I, Rajender Kumar s/o Sh. Baldev Ram, r/o Village Sawawa, P.O. Jobri, Tehsil Arki, District Solan (H.P.) as an oath that in my Aadhar Card my name entered as Raju is incorrect. Correct name is Rajender Kumar. Be noted.

RAJENDER KUMAR
s/o Sh. Baldev Ram,
r/o Village Sawawa,
P.O. Jobri, Tehsil Arki, District Solan (H.P.).

